

No. 14770

United States
Court of Appeals

For the Ninth Circuit.

See Vol. 2996
UNITED STATES OF AMERICA,

Appellant,

vs.

GEORGE C. FINN, CHARLES C. FINN, INTERNATIONAL
AIRPORTS, INC., a Corporation, PETER A. BANCROFT
and VINELAND ELEMENTARY SCHOOL DISTRICT
OF KERN COUNTY,

Appellees.

and

VINELAND ELEMENTARY SCHOOL DISTRICT OF
KERN COUNTY, CALIFORNIA,

Appellant,

vs.

UNITED STATES OF AMERICA, GEORGE C. FINN,
CHARLES C. FINN, and INTERNATIONAL AIR-
PORTS, INC.,

Appellees.

Transcript of Record

In Two Volumes

Volume I

(Pages 1 to 506)

OCT 11 1955

PAUL P. O'BRIEN, CLERK

Appeals from the United States District Court for the
Southern District of California,
Central Division.

No. 14770

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For the Ninth Circuit.**

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AIRPORTS, INC., a Corporation, PETER A. BANCROFT
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In Propria Persona:

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Hollywood, California;

CHARLES C. FINN,
7617 Lexington Ave.,
Hollywood, California.

In the United States District Court in and for
the Southern District of California, Central
Division

No. 14309

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE C. FINN, CHARLES C. FINN,
INTERNATIONAL AIRPORTS, INC., a
Corporation; PETER A. BANCROFT, VINE-
LAND ELEMENTARY SCHOOL DIS-
TRICT OF KERN COUNTY AND
SEABOARD SURETY COMPANY, A
Corporation,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF
AND BREACH CONTRACT

Comes now the plaintiff, United States of
America, and for its cause of action against the
above-named defendants, complains and alleges as
follows:

I.

This action arises under the Constitution and laws
of the United States of America, and in particular
under the provisions of the Surplus Property Act
of 1944, 58 Stat. c. 479, 50 U.S.C. App. 1611 et seq.,
as implemented by War Assets Administration
Regulation 4, 11 F.R. 5868, Title 32 C.F.R. 1946
Supp. sec. 8304.1 et seq., and under the provisions of

the Federal Property and Administrative Services Act of 1949, 63 Stat. c. 288, 40 U.S.C. 471 et seq. This Court has jurisdiction of this action under the provisions of Title 28, United States Code, Section 1345, and has jurisdiction to grant the declaratory relief asked under the provisions of Title 28, United States Code, Section 2201.

II.

Plaintiff is informed and believes, and upon such information and [2*] belief, alleges that the defendants, Charles C. Finn and George C. Finn, hereinafter sometimes referred to as the "defendants Finn," reside in or about the County of Los Angeles, California, and during all the pertinent times referred to herein, the defendants Finn were engaged in doing business for gain and profit as dealers in used or second hand property, including aircraft and aircraft parts, in or about the County of Los Angeles, California, and other places throughout the United States.

III.

At all times herein, the defendant, International Airports, Inc., was and now is a corporation duly organized and existing under the laws of the State of California.

IV.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant Peter A. Bancroft resides in or about the City of Bakersfield, Kern County, State of California, and

*Page numbering appearing at foot of page of original Certified Transcript of Record.

said defendant is, and during all the pertinent times hereinafter referred to was, the superintendent of the Vineland Elementary School District near the said City of Bakersfield.

V.

The defendant, Vineland Elementary School District, Kern County, State of California, is, and during all the pertinent times hereinafter referred to was, a public educational system or organization, and is and was a political subdivision and public corporation of the State of California, created and organized for public educational purposes.

VI.

The defendant, Seaboard Surety Company, is a corporation duly organized and existing under the laws of the State of New York.

VII.

Plaintiff is now, and during all the pertinent times hereinafter referred to was, the owner and is now entitled to the immediate possession of a certain C-46A Curtiss-Commando airplane bearing United States Army serial number 42-3645. The said airplane will hereinafter sometimes be referred to for convenience as "the C-46A airplane." [3]

VIII.

Pursuant to the Surplus Property Act of 1944, 58 Stat, C. 479, 50 U.S.C. App. 1611 et seq., and the policies and regulations promulgated thereunder,

and on or about June 25, 1946, plaintiff, United States of America, entered into a written agreement with defendant, Vineland School District. A full, true and correct copy of this agreement is attached hereto marked "Exhibit A" and made a part of this complaint.

IX.

On or about July 25, 1946, plaintiff transferred to the defendant, Vineland Elementary School District, under the Surplus Property Act of 1944, War Assets Administration Regulation 4, and upon and subject to the terms and conditions set forth in the agreement referred to in paragraph VIII hereof, the possession of the C-46A airplane.

X.

Plaintiff is informed and believes, and upon such information and belief alleges the C-46A airplane is, and during all the pertinent times hereinafter referred to was, fit for use by a tax-supported educational institution for non-flight instructional purposes and is not now, and has never been, scrap and has never been rendered unfit and useless except for its basic material content.

XI.

On or about February 28, 1951, the defendant, Vineland Elementary School District, acting by and through the defendant, Peter A. Bancroft, asserting that it was the owner of the full legal and beneficial title of the C-46A airplane, in violation of its

agreement with plaintiff, "Exhibit A" hereto, and in defiance of the plaintiff's right, title and interest in and to the C-46A airplane, purported to sell the C-46A airplane to the defendants Finn.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant, Vineland Elementary School District now claims that said purported sale to the defendants Finn is null and void and that the defendant, Vineland Elementary School District, is the owner and entitled to the possession of the C-46A airplane as against the plaintiff and all the world. [4]

XII.

On or about February 28, 1951, the defendants Finn, without right and without the consent of the plaintiff, wrongfully took possession of the C-46A airplane and have ever since and do now detain possession thereof against the will and without the consent of plaintiff. Plaintiff is informed and believes, and upon such information and belief alleges the defendants Finn claim that by virtue of the purported sale of the C-46A airplane to them by the defendant, Vineland Elementary School District, they are the owners and entitled to the possession thereof.

XIII.

Plaintiff is informed and believes, and upon such information and belief alleges on or about August 31, 1951, the defendant, International Airports, Inc., without right and without the consent of the plaintiff wrongfully took possession of the

C-46A airplane and have ever since and do now detain possession thereof against the will and without the consent of plaintiff. Plaintiff is further informed and believes, and upon such information and belief alleges the defendant, International Airports, Inc., claims that by virtue of a certain chattel mortgage and a certain lease both executed by the defendants Finn on or about August 31, 1951, it has an interest in the C-46A airplane as chattel mortgagee and lessee and is entitled to the possession thereof.

XIV.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant Seaboard Surety Company claims an interest in the C-46A airplane by virtue of a bill of sale executed by the defendants Finn on a date unknown to plaintiffs.

XV.

The defendants and each of them claims an interest or interests in the C-46A airplane adverse to the plaintiff. None of said claims has any legal validity whatsoever and actual controversies exist with respect to the C-46A airplane between the plaintiff and the defendants and each of them. [5]

Comes Now the Plaintiff, and for Its Second Cause of Action Complains and Alleges as Follows:

I.

Plaintiff repeats each and every allegation contained in paragraphs I, II, IV, V, VIII and IX

of the First Cause of Action of this complaint with the same force and effect as though they were fully set forth herein.

II.

Plaintiff is informed and believes, and upon such information and belief alleges during all the pertinent times hereinafter referred to, the value of the C-46A airplane was and it now is the sum of seventy thousand (\$70,000.00) dollars and the reasonable value of its use was and it now is eight thousand (\$8,000.00) dollars per month.

III.

On or about February 28, 1951, defendant Vine-land Elementary School District in violation and breach of the said agreement with plaintiff, and the provisions of the statute and regulations authorizing the same, purported to sell and transfer to the defendants Finn the full legal and beneficial title to the C-46A airplane and delivered to them the possession of said airplane.

IV.

Plaintiff is informed and believes, and upon such information and belief alleges the C-46A airplane was never at any time up to and including the time of its purported sale and delivery to the defendants Finn as hereinbefore alleged unfit for use by an educational institution or instrumentality for the purpose of nonflight instruction nor was it prior to such sale or delivery rendered completely

unfit and useless except for its basic material content, and the defendant, Vineland Elementary School District, did not sell or purport to sell the C-46A airplane to the defendants Finn as scrap, but on the contrary, purported to sell and did deliver the same to said defendants in the condition of an assembled airplane which could be and soon thereafter was rendered flightworthy.

V.

By reason of the violation and breach by defendant, Vineland Elementary School District, of its agreement with plaintiff as hereinbefore alleged, plaintiff [6] has been damaged in the sum of seventy thousand (\$70,000.00) dollars for loss of the value of the C-46A airplane and in the sum of one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use of said airplane from the time when said agreement was so violated and breached until the commencement of this action.

Comes Now the Plaintiff, and for Its Third Cause of Action Complains and Alleges as Follows:

I.

Plaintiff repeats each and every allegation contained in paragraphs I, II, IV, V, VIII and IX of the First Cause of Action, and paragraphs II, III, and IV of the Second Cause of Action of this complaint with the same force and effect as though they were fully set forth herein.

II.

At and prior to the time of the purported sale and delivery of the C-46A airplane by defendant, Vineland Elementary School District, to defendants Finn as hereinbefore alleged, defendant Peter A. Bancroft and defendants Finn had full knowledge of the terms and conditions of the agreement entered into between plaintiff and defendant Vineland Elementary School District on or about June 26, 1946, and of the provisions of the statutes and regulations authorizing said agreement and had full knowledge that the defendant, Vineland Elementary School District, had obtained and then held possession of the C-46A airplane upon and subject to all of the terms and conditions thereof.

III.

Defendant Peter A. Bancroft and defendants Finn, having the knowledge alleged in the next preceding paragraph hereof, and without justification therefor, nevertheless wilfully, intentionally and actively solicited, persuaded, induced and caused the defendant, Vineland Elementary School District, to violate and breach its said agreement with plaintiff by purporting to sell and by delivering to defendants Finn the C-46A airplane in the condition and under all of the circumstances hereinbefore alleged in reference to said purported sale and delivery [7]

IV.

By reason of the course of conduct of defendant Peter A. Bancroft and defendants Finn in inducing defendant Vineland Elementary School District to

breach and violate its agreement with plaintiff, plaintiff has been damaged in the sum of seventy thousand (\$70,000.00) dollars for the loss of the value of the C-46A airplane and in the sum of one hundred twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof from the time when said agreement was so violated and breached until the commencement of this action.

Wherefore, plaintiff, United States of America, demands judgement as follows:

1. That plaintiff is owner of the C-46A airplane, free and clear of any and all claims or demands of any kind or nature by the defendant herein or any of them;

2. That plaintiff is entitled to the immediate possession of the C-46A airplane, free and clear of any and all claims or demands of any kind or nature by the defendants herein or any of them;

3. Against the defendant Vineland Elementary School District for breach of its agreement with plaintiff in the sum of seventy thousand (\$70,000.00) dollars for the loss of the value of the C-46A airplane and one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof;

4. Against the defendants, Finn, and defendant Peter A. Bancroft for Inducing the defendant Vineland Elementary School District to breach its agreement with the plaintiff in the sum of seventy

thousand (\$70,000.00) dollars for the loss of the value of the C-46A airplane and one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof;

5. That the defendants pay the plaintiff the costs of this action;

6. For such other and further relief as to the Court may seem just and proper.

WALTER S. BINNS,
United states Attorney;

CLYDE C. DOWNING,
Assistant U.S. Attorney
Chief, Civil Division;

/s/ LEILA F. BULGRIN,
Assistant U.S. Attorney, Attorneys for Plaintiff;
United States of America. [8]

EXHIBIT A

WAA FORM 65

War Assets Administration
Office of Aircraft Disposal
Educational Aircraft Disposal Division
Washington 25, D. C.

No. 1

Date 6-25, 1946

Agreement

In consideration of the transfer of certain items of Aeronautical Property, under provisions of Surplus Property Act of 1944, Public Law 457.

Vineland Elementary School District

located at Rt. 6, Box 207, Bakersfield, Calif., hereby certifies and agrees as follows:

1. That said institution is an "educational institution" as defined in Paragraph 8304.1 of Surplus Property Administration Regulation No. 4 which reads as follows: "'Educational institution or instrumentality' means any school, school system, library, college, university, or other similar institution, organization, or association, which is organized for the primary purpose of carrying on instruction or research in the public interest, and which is a nonprofit institution or an instrumentality." "Nonprofit institution" means any nonprofit scientific, literary, educational, public-health, public-welfare, charitable, or eleemosynary institution, organization, or association, or any nonprofit hospital or similar institution, organization, or association, which has

been held exempt from taxation under section 101(6) of the Internal Revenue Code, or any nonprofit volunteer fire company or cooperative hospital or similar institution which has been held exempt from taxation under section 101(8) of the Internal Revenue Code.

2. That the property to be acquired hereunder is for the sole use of a (check one) ☒ Tax-supported or Nonprofit institution for one of the following nonflight purposes: (check one) ☒ Instruction ☐ Research ☐ Experiment.

3. That War Assets Administration is authorized to ship to said educational institution all Aeronautical Property transferred to it under the provisions of said Act.

4. That War Assets Administration is hereby relieved of any responsibility or charges that may arise or be incurred incident to shipment or delivery of any property so transferred.

5. Any forms to be submitted upon receipt of property will be executed and [9] returned to the address indicated thereon within forty-eight (48) hours after receipt of the property transferred.

6. That the acquired property will not be used for any actual flight purposes.

7. That all acquired property when unfit for the above purpose will be sold only as scrap and then only after it shall have been rendered completely unfit and useless except for its basic material con-

tent. Sales consummated within three (3) years of the date of acquisition must have the prior approval of the Disposal Agency.

8. That this Agreement shall be effective for all future transfers of Aeronautical Property under the provisions of Surplus Property Administration Regulation No. 4, as amended from time to time.

VINELAND ELEM. SCHOOL
DIST.

(Institution or Constituted
Authority in Charge.)

By DIST. SUPERINTENDENT
(Title.)

(Over)

The information requested below is to assist War Assets Administration in expediting shipments to your institution or to acquire desired information with a minimum of delay.

The following person is authorized to take all steps to facilitate the desired transfers:

1. Peter A. Bancroft,
Title: Dist. Supt.
2. Home address: 509 N. Louise St., Glendale,
Calif.
3. Business phone: Residence phone: Glendale
Citrus 1-4861

4. Remarks (including person available during vacation periods): Same as Above.

VINELAND SCHOOL
DISTRICT,

PETER A. BANCROFT,

By SEC. BOARD OF TRUSTEES.

State of California

County of Los Angeles—ss.

On this 27th day of June, 1946, in the city of Los Angeles, State of California, personally appeared before me Peter A. Bancroft, who being first duly sworn says that he is the Sec. of Board of Trustees of the Vineland School District, and that he is legally authorized to sign said Agreement for said school or institution; that the above Agreement has been approved by the proper officials of said institution or constituted authority, and that he signed said Agreement in my presence on the day stated above, as and for the official act of said school or institution.

[Seal]

C. H. MANN,

Notary Public in and for the
State of California.

My Commission Expires April 4, 1948.

Two copies must be notarized and returned to the Educational Aircraft Disposal Division, Office of

Aircraft Disposal, War Assets Administration,
Washington 25, D. C.

U. S. Government Printing Office 16-47804-1

[Endorsed]: Filed July 3, 1952.

Amended September 16, 1952. [11]

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR DECLARA-
TORY RELIEF, BREACH OF CONTRACT
AND CLAIM AND DELIVERY

Comes Now the plaintiff, United States of Amer-
ica, and amends its Complaint filed herein as fol-
lows:

I.

This action arises under the Constitution and laws of the United States of America, and in particular under the provisions of the Surplus Property Act of 1944, 58 Stat. c. 479, 50 U.S.C. App. 1611 et seq., as implemented by War Assets Administration Regulation 4, 11 F.R. 5868, Title 32 C.F.R. 1946 Supp. sec. 8304.1 et seq., and under the provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. c. 288, 40 U.S.C. 471 et seq. This Court has jurisdiction of this action under the provisions of Title 28, United States Code, Section 1345 and has jurisdiction to grant the declaratory relief asked under the provisions of Title 28, United States Code, Section 2201.

II.

Plaintiff is informed and believes, and upon such information and [12] belief, alleges that the defendants. Charles C. Finn and George C. Finn, hereinafter sometimes referred to as the "defendants Finn." reside in or about the County of Los Angeles, California, and during all the pertinent times referred to herein, the defendants Finn were engaged in doing business for gain and profit as dealers in used or second hand property, including aircraft and aircraft parts, in or about the County of Los Angeles, California, and other places throughout the United States.

III.

At all times mentioned herein, the defendant, International Airports, Inc., was and now is a corporation duly organized and existing under the laws of the State of California.

IV.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant Peter A. Bancroft resides in or about the City of Bakersfield, Kern County, State of California, and said defendant is, and during all the pertinent times hereinafter referred to was, the superintendent of the Vineland Elementary School District near the said City of Bakersfield.

V.

The defendant, Vineland Elementary School District, Kern County, State of California, is, and during all the pertinent times hereinafter referred to

was, a public educational system or organization, and is and was a political subdivision and public corporation of the State of California, created and organized for public educational purposes.

VI.

The defendant, Seaboard Surety Company, is a corporation duly organized and existing under the laws of the State of New York.

VII.

Plaintiff is now, and during all the pertinent times hereinafter referred to was, the owner and is now entitled to the immediate possession of a certain C-46A Curtiss-Commando airplane bearing United States Army serial number 42-3645. The said airplane will hereinafter sometimes be referred to for convenience as "the C-46A airplane." [13]

VIII.

Pursuant to the Surplus Property Act of 1944, 58 Stat. c. 479, 50 U.S.C. App. 1611 et seq., and the policies and regulations promulgated thereunder, and on or about June 25, 1946, plaintiff, United States of America, entered into a written agreement with defendant, Vineland School District. A full, true and correct copy of this agreement is attached hereto marked "Exhibit A" and made a part of this complaint.

IX.

On or about July 25, 1946, plaintiff transferred to the defendant, Vineland Elementary School District,

under the Surplus Property Act of 1944, War Assets Administration Regulation 4 and upon and subject to the terms and conditions set forth in the agreement referred to in paragraph VIII hereof. the possession of the C-46A airplane.

X.

Plaintiff is informed and believes, and upon such information and belief alleges the C-46A airplane is, and during all the pertinent times hereinafter referred to was, fit for use by a tax-supported educational institution for nonflight instructional purposes and is not now, and has never been, scrap and has never been rendered unfit and useless except for its basic material content.

XI.

On or about February 28, 1951, the defendant, Vineland Elementary School District, acting by and through the defendant, Peter A. Bancroft, asserting that it was the owner of the full legal and beneficial title of the C-46A airplane, in violation of its agreement with plaintiff, "Exhibit A" hereto, and in defiance of the plaintiff's right, title and interest in and to the C-46A airplane, purported to sell the C-46A airplane to the defendants Finn.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant, Vineland Elementary School District, now claims that said purported sale to the defendants Finn is null and void and that the defendant, Vineland Elementary School District, is the owner and entitled to the

possession of the C-46A airplane as against the plaintiff and all the world. [14]

XII.

On or about February 28, 1951, the defendants Finn, without right and without the consent of the plaintiff, wrongfully took possession of the C-46A airplane and have ever since and do now detain possession thereof against the will and without the consent of plaintiff. Plaintiff is informed and believes, and upon such information and belief alleges the defendants Finn claim that by virtue of the purported sale of the C-46A airplane to them by the defendant, Vineland Elementary School District, they are the owners and entitled to the possession thereof.

XIII.

Plaintiff is informed and believes, and upon such information and belief alleges on or about August 31, 1951, the defendant, International Airports, Inc., without right and without the consent of the plaintiff wrongfully took possession of the C-46A airplane and have ever since and do now detain possession thereof against the will and without the consent of plaintiff. Plaintiff is further informed and believes, and upon such information and belief alleges the defendant, International Airports, Inc., claims that by virtue of a certain chattel mortgage and a certain lease both executed by the defendants Finn on or about August 31, 1951, it has an interest in the C-46A airplane as chattel mortgagee and lessee and is entitled to the possession thereof.

XIV.

Plaintiff is informed and believes, and upon such information and belief alleges the defendant Seaboard Surety Company claims an interest in the C-46A airplane by virtue of a bill of sale executed by the defendants Finn on a date unknown to plaintiffs.

XV.

The defendants and each of them claims an interest or interests in the C-46A airplane adverse to the plaintiff. None of said claims has any legal validity whatsoever, and actual controversies exist with respect to the C-46A airplane between the plaintiff and the defendants and each of them. [15.]

Comes Now the Plaintiff, and for Its Second Cause of Action Complains and Alleges as Follows:

I.

Plaintiff repeats each and every allegation contained in paragraphs I, II, IV, V, VIII and IX of the First Cause of Action of this complaint with the same force and effect as though they were fully set forth herein.

II.

Plaintiff is informed and believes, and upon such information and belief alleges during all the pertinent times hereinafter referred to, the value of the C-46A airplane was and it now is the sum of seventy thousand (\$70,000.00) dollars and the reasonable value of its use was and it now is eight thousand (\$8,000.00) dollars per month.

III.

On or about February 28, 1951, defendant Vineland Elementary School District in violation and breach of the said agreement with plaintiff, and the provisions of the statute and regulations authorizing the same, purported to sell and transfer to the defendants Finn the full legal and beneficial title to the C-46A airplane and delivered to them the possession of said airplane.

IV.

Plaintiff is informed and believes, and upon such information and belief alleges the C-46A airplane was never at any time up to and including the time of its purported sale and delivery to the defendants Finn as hereinbefore alleged unfit for use by an educational institution of instrumentality for the purpose of nonflight instruction nor was it prior to such sale or delivery rendered completely unfit and useless except for its basic material content, and the defendant, Vineland Elementary School District, did not sell or purport to sell the C-46A airplane to the defendants Finn as scrap, but on the contrary, purported to sell and did deliver the same to said defendants in the condition of an assembled airplane which could be and soon thereafter was rendered flightworthy.

V.

By reason of the violation and breach by defendant, Vineland Elementary [16] School District, of its agreement with plaintiff as hereinbefore alleged, plaintiff has been damaged in the sum of seventy

thousand (\$70,000.00) dollars for loss of the value of the C-46A airplane and in the sum of one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use of said airplane from the time when said agreement was so violated and breached until the commencement of this action.

Comes Now the Plaintiff, and for Its Third Cause of Action Complains and Alleges as Follows:

I.

Plaintiff repeats each and every allegation contained in paragraphs I, II, IV, V, VIII and IX of the First Cause of Action, and paragraphs II, III and IV of the Second Cause of Action of this complaint with the same force and effect as though they were fully set forth herein.

II.

At and prior to the time of the purported sale and delivery of the C-46A airplane by defendant, Vineland Elementary School District, to defendants Finn as hereinbefore alleged, defendant Peter A. Bancroft and defendants Finn had full knowledge of the terms and conditions of the agreement entered into between plaintiff and defendant Vineland Elementary School District on or about June 26, 1946, and of the provisions of the statutes and regulations authorizing said agreement and had full knowledge that the defendant, Vineland Elementary School District, had obtained and then held possession of the C-46A airplane upon and subject to all of the terms and conditions thereof.

III.

Defendant Peter A. Bancroft and defendants Finn, having the knowledge alleged in the next preceding paragraph hereof, and without justification therefor, nevertheless wilfully, intentionally and actively solicited, persuaded, induced and caused the defendant, Vineland Elementary School District, to violate and breach its said agreement with plaintiff by purporting to sell and by delivering to defendants Finn the C-46A airplane in the condition and under all of the circumstances hereinbefore alleged in reference to said purported sale and delivery. [17]

IV.

By reason of the course of conduct of defendant Peter A. Bancroft and defendants Finn in inducing defendant Vineland Elementary School District to breach and violate its agreement with plaintiff, plaintiff has been damaged in the sum of seventy thousand (\$70,000.00) dollars for the loan of the value of C-46A airplane and in the sum of one hundred twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof from the time when said agreement was so violated and breached until the commencement of this action.

Comes Now the Plaintiff, and for Its Fourth Cause of Action Complains and Alleges as Follows:

I.

Plaintiff repeats each and every allegation contained in paragraphs I, II, III and VII of the First Cause of Action, and paragraph II of the Second

Cause of Action, with the same force and effect as though they were fully set forth herein.

II.

On or about February 28, 1951, the defendants Finn, without right and without the consent of the plaintiff, wrongfully took possession of the C-46A airplane and have ever since and do now detain possession thereof against the will and without the consent of plaintiff and that on some date subsequent to February 28, 1951, defendant International Airport Corporation likewise wrongfully took possession of the C-46A airplane and has ever since said date and does now detain possession thereof against the will and without the consent of plaintiff. Plaintiff has made demands upon the defendants Finn and defendant International Airport Corporation for the possession of the C-46A airplane but these defendants and each of them has refused to comply with the said demands and to surrender the possession of the C-46A airplane to plaintiff.

Wherefore, plaintiff, United States of America, demands judgment as follows:

1. That plaintiff is owner of the C-46A airplane, free and clear of any and all claims or demands of any kind or nature by the defendants herein or any of them; [18]
2. That plaintiff is entitled to the immediate possession of the C-46A airplane, free and clear of any and all claims or demands of any kind or nature by the defendants herein or any of them;
3. Against the defendants Finn and Interna-

tional Airport Corporation for the possession of the C-46A airplane or the sum of seventy thousand dollars (\$70,000.00), the value thereof, in the event delivery of the C-46A airplane cannot be had together with the sum of one hundred and twenty-eight thousand dollars (\$128,000.00) damages;

4. Against the defendant Vineland Elementary School District for breach of its agreement with plaintiff in the sum of seventy thousand (\$70,000.00) dollars for the loss of the value of the C-46A airplane and one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof;

5. Against the defendants Finn, and defendant Peter A. Bancroft for inducing the defendant Vineland Elementary School District to breach its agreement with the plaintiff in the sum of seventy thousand (\$70,000.00) dollars for the loss of the value of the C-46A airplane and one hundred and twenty-eight thousand (\$128,000.00) dollars for the loss of the reasonable value of the use thereof;

6. That the defendants pay the plaintiff the costs of this action;

7. For such other and further relief as to the Court may seem just and proper.

WALTER S. BINNS,

United States Attorney;

CLYDE C. DOWNING,

Assistant United States Attorney, Chief, Civil
Division,

/s/ LEILA F. BULGRIN,

Assistant U. S. Attorney, Attorneys for Plaintiff,
United States of America.

Duly verified.

[Endorsed]: Filed September 16, 1952. [19]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT INTERNATIONAL AIRPORTS, INC., TO AMENDED COMPLAINT

Defendant International Airports, Inc., appears, and in answer to plaintiff's amended complaint admits, denies, and alleges as follows:

Answer to First Alleged Cause of Action

I.

Answering paragraphs II, IV, V, VI, VIII, IX, X, XI, and XII thereof, this answering defendant has no information or belief sufficient to enable it answer the same, and basing its denial on that ground denies generally and specifically each and every allegation in said paragraphs contained.

II.

Answering paragraph VII thereof, denies generally and specifically each and every allegation therein contained.

III.

Answering the first sentence of paragraph XIII thereof, [23] denies generally and specifically each and every allegation therein contained; answering the second sentence of said paragraph, admits that by virtue of the chattel mortgage therein mentioned it has an interest in said C-46 airplane as chattel mortgagee; otherwise, denies generally and specifically each and every allegation therein contained. In this connection, this answering defendant alleges that in addition to its rights under said chattel mortgage, it has a valid and subsisting mechanic's lien on said aircraft to the extent of \$14,478.43 for work, labor, services and material bestowed thereon.

IV.

Answering the second sentence of paragraph XV, denies generally and specifically each and every allegation therein contained.

Answer to Second Alleged Cause of Action

I.

This answering defendant repeats its answers to paragraphs II, IV, V, VIII and IX of the first cause of action with the same force and effect as though they were fully set forth herein.

II.

Answering paragraph II thereof, denies generally and specifically each and every allegation therein contained.

III.

Answering paragraphs III, IV, and V thereof, this answering defendant has no information or belief sufficient to enable it to answer the same, and basing its denial on that ground, denies each and every allegation therein contained; and expressly denies that plaintiff has been damaged in the amounts, or either amount, set forth in said paragraph V, or in any other amounts, or at all. [24]

Answer to Third Alleged Cause of Action

I.

This answering defendant repeats its answers to paragraphs II, IV, V, VIII and IX of the first cause of action and paragraphs II, III and IV of the second cause of action with the same force and effect as though they were fully set forth herein.

II.

Answering paragraph II thereof, this answering defendant has no information or belief sufficient to enable it to answer the same, and basing its denial on that ground, denies generally and specifically each and every allegation therein contained.

III.

Answering paragraph III thereof, this answering defendant has no information or belief sufficient to enable it to answer the same, and basing its denial on that ground, denies generally and specifically each and every allegation therein contained.

IV.

Answering paragraph IV thereof, this answering

defendant has no information or belief sufficient to enable it to answer the same, and basing its denial on that ground, denies generally and specifically each and every allegation therein contained; and expressly denies that plaintiff has been damaged in the amounts, or either amount, set forth in said paragraph IV, or in any other amount, or at all.

Answer to Fourth Alleged Cause of Action

I.

This answering defendant repeats its answers to paragraphs II, III and VII of the first cause of action and paragraph II of the second cause of action with the same force and effect as though they were fully set forth herein.

II.

Answering that portion of paragraph II thereof to and [25] including the words "without the consent of plaintiff and," together with any or all other allegations in said paragraph with respect to defendants Finn, this answering defendant has no information or belief sufficient to enable it to answer the same, and basing its denial on that ground, denies generally and specifically each and all of said allegations; answering the remainder of said paragraph, denies generally and specifically each and every allegation therein contained.

For a First Separate and Affirmative Defense, This Answering Defendant Alleges That:

I.

On or about August 31, 1951, defendants George

C. Finn and Charles C. Finn (hereinafter sometimes called defendants Finn) entered into a contract in writing with this answering defendant relating to said C-46 aircraft, Registration No. N-111H. A copy of said contract is annexed hereto, marked Exhibit "A," and by reference herein incorporated. Paragraph 8 of said contract Exhibit "A" provides as follows:

"The Finns warrant that they are the sole owners of said aircraft, free from any or all liens or encumbrances, and furnish International herewith a copy of their Certificate of Registration of said aircraft, authenticated by the Civil Aeronautics Administration."

II.

Pursuant to said contract Exhibit "A," and as part of the same transaction, this answering defendant loaned to defendants Finn the sum of \$15,000.00 in cash. Said loan was secured by a chattel mortgage on said aircraft in the form annexed hereto, marked Exhibit "B," and by reference herein incorporated.

III.

Said chattel mortgage was recorded with the Civil [26] Aeronautics Administration on November 14, 1951, and provides in part as follows:

"Said Mortgagor hereby declares and hereby warrants to the said Mortgagee that he is the absolute owner of the legal and beneficial title to the said aircraft and in possession thereof, and that the same is free and clear of all liens, encumbrances, and adverse claims whatsoever."

IV.

Further, pursuant to said contract Exhibit "A," and on or about November 15, 1951, defendants Finn delivered said aircraft to this answering defendant for the purposes therein stated; thereafter, and also pursuant to said contract Exhibit "A," this answering defendant bestowed work, labor, services, and materials on said aircraft of the reasonable value of \$14,478.43, for which it asserts and claims a mechanic's lien on said aircraft. No part of said sum has been paid, and same is wholly owing and unpaid.

V.

Said money was loaned to defendants Finn, and said work, labor, services and materials were bestowed on said aircraft in good faith, in reliance upon the apparent ownership of said aircraft by defendants Finn, upon the recorded title of said defendants as aforesaid, and prior to receiving notice of any claim of plaintiff herein alleged or that of any other person, firm, or corporation.

Wherefore, defendant prays that plaintiff take nothing as against this answering defendant; that the interests, and each of them, of said defendant, as hereinabove set forth, be recognized and protected as against any claims herein alleged by plaintiff, and for such other and further relief as to the court may seem just.

/s/ A. J. BLACKMAN,

Attorney for Defendant

International Airports, Inc.

EXHIBIT A

[See Deft. International's Exhibit E]

EXHIBIT B

Aircraft Chattel Mortgage

This Mortgage, made this 31st day of August, 1951, by and between George C. Finn and Charles C. Finn, whose address is 6075 Franklin Avenue, Hollywood, California, hereinafter called the Mortgagor, and International Airports, Inc., whose address is Hangar No. 2, Lockheed Air Terminal, Burbank, California, hereinafter called the Mortgagee.

Witnesseth: That the said Mortgagor, being justly indebted unto the said Mortgagee in the sum of Fifteen Thousand Dollars (\$15,000) as evidenced by a promissory note referred to herein, grants, bargains, sells, and mortgages to the said Mortgagee, its successors and assigns, the following described aircraft:

Aircraft Make: Curtiss C-46.

Serial No.: 1-232.

CAA Registration No: N-111H.

together with all equipment and accessories attached thereto or used in connection therewith including the following: Any improvements or additions to said aircraft made hereafter, all of which are included in the term aircraft as used herein.

The above described aircraft is hereby mortgaged to the Mortgagee for the purpose of securing in the order named:

First: The payment of all indebtedness evidenced by and according to the terms of that certain promissory note, hereinbelow described, and all renewals and extensions thereof:

Note bearing date of August 31, 1951, executed by the Mortgagor and payable to the order of International Airports, Inc., Burbank, California, in the aggregate principal sum of \$15,000, with interest thereon at the rate of 6 per centum per annum, from date, payable in installments as follows:

The principal and interest of said note is payable in [29] 18 installments of \$908.33 each on the first day of each successive month beginning with the 1st day of December, 1951, or sooner if the term of a certain lease of even date with International Airports, Inc., commences sooner. The last payment of \$908.33 is due 18 months thereafter.

Second: The prompt and faithful discharge and performance of each agreement of the Mortgagor herein contained made with or for the benefit of the Mortgagee in connection with the indebtedness to secure which this instrument is executed, and the repayment of any sums expended or advanced by the Mortgagee for the maintenance or preservation

of the property mortgaged hereby or in enforcing its rights hereunder.

Said Mortgagor hereby declares and hereby warrants to the said Mortgagee that he is the absolute owner of the legal and beneficial title to the said aircraft and in possession thereof, and that the same is free and clear of all liens, encumbrances, and adverse claims whatsoever.

In the event said lease with International Airports, Inc., is terminated or cancelled for any reason, payments required to be made hereunder shall be extended for a period of one hundred twenty (120) days or, if sooner, until said aircraft is sold or re-leased.

Provided, however, that if the Mortgagor, his heirs, administrators, successors or assigns shall pay said note and the interest thereon in accordance with the terms thereof and shall keep and perform all and singular the terms, covenants, and agreements of this mortgage, then this mortgage shall be null and void.

Time is of the essence of this mortgage. It is hereby agreed that if default be made in the payment of any [30] part of the principal or interest of the promissory note secured hereby at the time and in the manner therein specified, or if any breach be made of any obligation or promise of the mortgagor herein contained or secured hereby, or if any or all of the property covered hereby be hereafter sold, leased, transferred, mortgaged or otherwise encum-

bered without the written consent of the Mortgagee first had and obtained, or in the event of the seizure of the aircraft under execution or other legal process, or if for any other reason the Mortgagee may deem itself insecure, then the whole principal sum unpaid upon said promissory note, with the interest accrued thereon, or advanced under the terms of this mortgage, or secured hereby, and the interest thereon, shall immediately become due and payable at the option of the Mortgagee.

Upon default, Mortgagee may at once proceed to foreclose this mortgage in any manner provided by law, or it may at its option, and it is hereby empowered so to do, with or without a foreclosure action, enter upon the premises where the said aircraft may be and take possession thereof; and remove and sell and dispose of the same at public or private sale, and from the proceeds of such sale retain all costs and charges incurred by it in the taking or sale of said aircraft, including any reasonable attorney's fees incurred; also all sums due it on said promissory note, under any provisions thereof, or advanced under the terms of this mortgage, and interest thereon, or due or owing to the said Mortgagee under any provisions of this mortgage, or secured hereby, with the interest thereon, and any surplus of such proceeds remaining shall be paid to the Mortgagor, or whoever may be lawfully entitled to receive the same. If a deficiency occurs, [31] the Mortgagor agrees to pay such deficiency forthwith.

Said Mortgagee or its agent may bid and purchase at any sale made under this mortgage or herein authorized, or at any sale made upon foreclosure of this mortgage.

In Witness Whereof, the Mortgagor has hereunto set his hand and seal on the day and year first above written.

/s/ GEORGE C. FINN,

/s/ CHARLES C. FINN.

State of California,
County of Los Angeles—ss.

On this 31st day of August, 1951, before me personally appeared the above-named Mortgagors, to me known to be the persons described in and who executed the foregoing chattel mortgage, and acknowledged that they executed the same as their free act and deed.

Given under my hand and official seal the day and year above written.

/s/ HAROLD F. BROWN,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires May 17, 1955.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed October 21, 1952. [32]

[Title of District Court and Cause.]

ORDER DENYING MOTION TO DISMISS
AND PROTECTING PLAINTIFF'S POS-
SESSION OF PROPERTY

A Notice of Motion to Dismiss or in Lieu Thereof to Quash the Service of Summons, and Order to Shorten Time, together with Points and Authorities in support thereof, having been filed herein by the defendants, George C. Finn and Charles C. Finn, on December 5, 1952, and the said Motion to Dismiss having come on regularly for hearing on December 15, 1952, at 10:00 o'clock a.m., and again on December 22, 1952, at 2:00 o'clock p.m., before the Honorable Harry C. Westover, Judge presiding, and the plaintiff appearing by its attorneys, Walter S. Binns, United States Attorney; Clyde C. Downing and Leila F. Bulgrin, Assistants United States Attorney, the defendant, International Airports, Inc., a corporation, appearing by and through its counsel, A. J. Blackman, and the defendants, Charles C. Finn and George C. Finn, appearing in propria persona and without representation by counsel, and the Court having considered and heard the arguments of counsel and defendants, Charles C. Finn and George C. Finn, and having [33A] considered the Points and Authorities filed by the said defendants, George C. Finn and Charles C. Finn, and counsel for the plaintiff, and the Court having made an Order on December 22, 1952, denying said Motion to Dismiss and upon motion of the plaintiff made in open court for an appropriate order to protect the plaintiff in its

possession of certain property delivered into its possession by claim and delivery proceedings auxiliary to the above-entitled action, the Court having granted said motion, and Good Cause Appearing Therefore,

It Is Hereby Ordered, Adjudged and Decreed that the Motion to Dismiss or In Lieu Thereof to Quash the Service of Summons made by the defendants, George C. Finn and Charles C. Finn, be and the same is hereby denied, and said defendants, George C. Finn and Charles C. Finn, are hereby granted ten days from December 22, 1952, within which to answer plaintiff's Amended Complaint filed herein; and

It Is Hereby Further Ordered, Adjudged and Decreed, that pending entry of final Judgment herein after trial on the merits of the claims of the respective parties to this action, and until a further order of this Court, the plaintiff, United States of America, is and shall be entitled to the sole and exclusive control, custody and possession of the C-46A airplane referred to and described in the Amended Complaint on file herein, and in connection therewith, and that the officers, employees and agents of said plaintiff may do or perform any act or thing in relation to said airplane and its component parts which they deem necessary or convenient to secure, protect, preserve and maintain the same, including the removal thereof by flight or otherwise from its present location to some other location, within the jurisdiction of this Court; and

It Is Further Ordered, Adjudged and Decreed, that until the further order of this Court, the defendants, George C. Finn and Charles C. Finn, International Airports, Inc.; Peter Bancroft, Vine-land School District and Seaboard Surety Com-pany, their officers, employees and agents are, and each of them is, enjoined, restrained and prohibited from going near, touching, tampering with, enter- ing, altering, changing, removing or otherwise mo- lesting in any manner the said airplane, or any of its component parts and from doing or perform- ing any act or thing in any relation thereto which will in any manner whatsoever interfere [33B] with, disturb or harass the plaintiff, its officers, em- ployees and agents in the exercise on behalf of plaintiff of the right to have and keep the said air- plane in its sole and exclusive control, custody and possession as herein provided.

Dated: This 5th day of Jan., 1953.

/s/ HARRY C. WESTOVER,

United States District Judge.

[Endorsed]: Filed January 6, 1953. [33C]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS FOR
FAILURE TO STATE A CAUSE OF
ACTION

To United States of America, above-named Plaintiff, and to Walter S. Binns, U. S. Attorney:

Please Take Notice that the undersigned Defendants, will specially appear for the purposes of this Motion and not otherwise, and move the above-entitled Court in the courtroom of Honorable Harry Westover, United States District Judge, Courtroom No. 5, Second Floor. U. S. Post Office and Courthouse Building, 312 North Spring Street, Los Angeles, California, on Monday, January 19, 1953, at the hour of 10:00 o'clock a.m., or as soon thereafter as Defendants may be heard, as follows:

1. To dismiss this action as to them and each of them, on the grounds:

(a) Plaintiff alleges a forfeiture was committed by sale of the aircraft to Defendants Finn, pursuant to the laws governing the purchase of the aircraft from the Plaintiff by [34] the Vineland School District.

(b) The Complaint does not state sufficient facts to state a cause of action.

(c) No such forfeiture exists.

(d) The burden of proof is on the Plaintiff.

Dated: January 9, 1953.

/s/ GEORGE C. FINN,

/s/ CHARLES C. FINN,

Defendants.

[Endorsed]: Filed January 9, 1953. [35]

[Title of District Court and Cause.]

MINUTES OF THE COURT—JAN. 19, 1953

Present: The Hon. Harry C. Westover,
District Judge.

Counsel for Plaintiff:

Leila F. Bulgrin, Ass't. U. S. Att'y.

Clyde C. Downing, Ass't. U. S. Att'y.

Defendants:

John Doe Finn, Alleged to Be

George C. Finn, in Pro. Per.

Proceedings:

For hearing motion of defendants, George C. Finn and Charles C. Finn, filed Jan. 9, 1953, to dismiss the action as to them for failure to state a cause of action.

Def't. Finn declines to state his full name, and Attorney Bulgrin states she understands his name to be George C. Finn.

Court Orders motion to dismiss denied and di-

rects defendants, George C. Finn and Charles C. Finn, to answer herein.

Defendant Finn orally demands trial by jury and requests thirty days within which to answer.

Attorney Bulgrin hands copy of order protecting custody of plane to Defendant Finn.

Court orders the matter continued to 2 p.m., for further proceedings and directs the parties, and specifically Defendant Finn, to appear at that time.

At 2:05 p.m., court reconvenes herein and all being present as before, except Attorney Downing. Defendant Finn declines to state his full name in response to request of the Court that he state his full name or be found in contempt of Court.

Court orders that Defendants Finn answer the complaint in ten days.

Attorney Bulgrin presents affidavit, which is filed, and pursuant thereto Court signs order to show cause re contempt (that Defendants Finn show cause why an order should not be entered holding them in contempt for failure to obey order made Dec. 22, 1952, adjudging custody of certain C-46 airplane in custody of plaintiff), returnable Feb. 2, 1953, 10 a.m., which is filed, and copies of said affidavit and Order to Show Cause are handed to Defendant Finn.

Upon request of Court that Defendant Finn state his full name, Defendant Finn again refuses to state his full name, whereupon the Court Finds

him in contempt of court and commits him to custody of U. S. Marshal, and orders this matter continued to 10 a.m., Jan. 20, 1953. for further proceedings.

(See Order adjudging defendant "John Doe" Finn, alleged to be George C. Finn, in contempt, Following:)

EDMUND L. SMITH,
Clerk;

By /s/ E. M. ENSTROM, JR.,
Deputy Clerk. [36]

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT FOR
DECLARATORY RELIEF, BREACH OF
CONTRACT AND CLAIM AND DELIVERY

Come now the defendants, Peter A. Bancroft and the Vineland Elementary School District of Kern County, and for themselves alone answer the Amended Complaint on file herein, as follows:

In Answer to the First Cause of Action of Plaintiff Against the Defendants, Peter A. Bancroft, and Vineland Elementary School District, the Defendants, and Each of Them, Admit, Deny and Allege as Follows:

I.

The defendants, and each of them, deny each and every allegation contained in plaintiff's First Cause of Action, both generally and specifically.

As and for a Second, Separate and Further Answer and Defense to Said First Cause of Action of Said Amended Complaint, the Defendants, and Each of Them, Allege: [37]

I.

That at all times mentioned in plaintiff's Amended Complaint the defendant, Vineland Elementary School District, was and still is the owner of the C-46A airplane, described and referred to in plaintiff's said amended complaint; that these defendants did not solicit offers for the sale of the said C-46A airplane, referred to in plaintiff's said amended complaint, from the defendants George C. Finn and Charles C. Finn, hereinafter referred to as the "defendants Finn"; that the said defendants Finn offered to purchase the said C-46A airplane from the defendant Vineland Elementary School District in December, 1950; that at said time the defendant, Peter A. Bancroft, duly notified the said defendants Finn that said C-46A airplane had been secured by the defendant Vineland Elementary School District pursuant to the provisions of the Surplus Property Act of 1944, and related statutes and regulations, as set forth in paragraph I of plaintiff's First Cause of Action, and that said C-46A airplane would not be sold by the defendant Vineland Elementary School District to the said defendants Finn, or to anyone else, until and unless the consent of the United States Government was first obtained.

II.

That on or about the 1st day of January, 1951, and after the defendants Finn had offered to purchase said C-46A airplane from the defendant Vineland Elementary School District, the said defendant, by and through its duly elected, qualified and acting Board of Trustees, did call and advertise for the reception of bids for the sale of said airplane; that said notice calling for bids was duly posted for two (2) successive weeks, from the 6th day of January, 1951, to and including, the 20th day of January, 1951, in three (3) public places located within the defendant Vineland Elementary School District, in the manner prescribed by law. That an exact copy of said notice calling for bids is attached hereto, marked "Exhibit A," and is hereby referred to and by such reference made a part hereof.

III.

That said notice calling for bids, published as aforesaid, among other things, provides: "Bidders are expressly notified that the aforesaid [38] aircraft was acquired by the District from the Government of the United States and the War Assets Administration, subject to certain restrictions on the use thereof under the deed of conveyance, and the successful bidder will be required to secure the necessary releases to said restrictions from the proper governmental agency of the United States of America."

IV.

That on or about the 22nd day of January, 1951,

the defendants Finn did, in accordance with the provisions of said notice, and at the time and place specified in said notice, submit a bid for the purchase of said C-46A airplane from the defendant Vineland Elementary School District, which bid was duly accepted by the said defendant Vineland Elementary School District by and through its duly qualified, elected and acting Board of Trustees. That in said bid the said defendants Finn expressly agreed to secure the consent of the Government of the United States to the sale of said C-46A airplane and did further agree to secure a waiver from the said United States Government, and from any related governmental agency thereof, of any and all restrictions on the use of said C-46A airplane existing by virtue of any Federal law, or by virtue of any agreement between the said Vineland Elementary School District and the said United States Government, or related governmental agency thereof.

V.

That on or about the 28th day of February, 1951, and in accordance with said notice and with said bid submitted by the defendants Finn, the defendant Vineland Elementary School District and the said defendants Finn did enter into a written agreement for the sale of said C-46A airplane by said district to said defendants Finn. That in said agreement it was expressly agreed by the said defendants, and all of them, that the sale of said C-46A airplane was subject to any and all restrictions imposed by the United States Government on the use

and sale thereof, and that the said defendant Vineland Elementary School District was entitled to the sole use and possession of said C-46A airplane for educational purposes only, until such time as the said defendants Finn had secured the consent of the United States Government and related [39] governmental agencies thereof, to the sale and use thereof; that an exact copy of said written agreement is attached hereto and marked "Exhibit B," and is hereby referred to and by such reference made a part hereof.

VI.

That on or about the 15th day of August, 1952, and while said C-46A airplane was in the possession of the defendant Vineland Elementary School District, the defendants Finn represented to the defendant, Peter A. Bancroft, that the said defendants Finn had secured the consent of the United States Government to the sale of said airplane, and that the said defendants Finn had also secured from the said United States Government a waiver of any and all restrictions to the sale and use of said airplane. That the defendants, Peter A. Bancroft and the Vineland Elementary School District, are now informed and believe, and upon the basis of such information and belief allege that said representations were false.

VII.

That on the basis of said representations made by the said defendants Finn, as aforesaid, and with the full belief that said representations were true, the

defendant Peter A. Bancroft released said C-46A airplane to said defendants Finn; that said defendant, Peter A. Bancroft, was induced to release said C-46A airplane, as aforesaid, as a direct result of said false and fraudulent representations; that the defendants Finn did then and there remove said C-46A airplane from the possession and custody of the defendant Vineland Elementary School District: that said C-46A airplane was removed from the possession and custody of said Vineland Elementary School District, through the false and fraudulent representations of the defendants Finn.

VIII.

That by reason of the facts and circumstances herein alleged, the defendant Vineland Elementary School District did not breach its agreement with the Government of the United States, or any related governmental agency thereof; that said defendant is still entitled to the sole use and possession of said C-46A airplane for educational purposes; that said C-46A airplane [40] was at all times mentioned in plaintiff's amended complaint, and still is, the property of the defendant Vineland Elementary School District.

As and for a Third, Separate and Further Answer and Defense to Said First Cause of Action of Said Amended Complaint, the Defendant, Vineland Elementary School District, for Itself Alone, Alleges:

I.

The defendant here refers to all of the allegations

contained in paragraphs I, II, III, IV, V, VI, VII, and VIII of its second affirmative defense against the plaintiff's First Cause of Action, and repleads each of said allegations in this third separate and further defense against the said plaintiff, with the same force and effect as though they were fully set forth herein.

II.

That the defendants Finn secured possession of the said C-46A airplane through false and fraudulent representations and without the consent of the duly elected, qualified and acting Board of Trustees of the Vineland Elementary School District.

In Answer to the Second Cause of Action of Plaintiff Against the Defendants, Peter A. Bancroft and Vineland Elementary School District, the Defendants, and Each of Them, Deny and Allege as Follows:

I.

That the defendants and each of them deny each and every allegation contained in plaintiff's Second Cause of Action, both generally and specifically.

As and for a Second, Separate and Further Answer and Defense to Said Second Cause of Action of Said Amended Complaint, Defendants, and Each of Them, Allege:

I.

The defendants, and each of them, here refer to all of the allegations contained in paragraphs I, II,

III, IV, V, VI, VII and VIII of their second affirmative defense against the plaintiff's First Cause of Action and replead each of said allegations in this second, separate and further defense against the plaintiff's Second Cause of Action as though the same were fully set forth herein. [41]

As and for a Third, Separate and Further Answer and Defense to Said Second Cause of Action of Said Amended Complaint, the Defendant, Vineland Elementary School District, for Itself Alone, Alleges as Follows:

I.

Said defendant here refers to all of the allegations contained in paragraphs I, II, III, IV, V, VI, VII and VIII of its second affirmative defense against the plaintiff's First Cause of Action and repleads each of said allegations in this third, separate and further defense against the plaintiff's Second Cause of Action, with the same force and effect as though they were fully set forth herein.

II.

The said defendant here refers to all of the allegations of paragraph II of its third affirmative defense against the plaintiff's First Cause of Action and repleads each of said allegations in this third, separate and further defense against the plaintiff's Second Cause of Action, with the same force and effect as though they were fully set forth herein.

In Answer to the Third Cause of Action of Plaintiff Against the Defendants, Peter A. Bancroft and Vineland Elementary School District, the Defendants, and Each of Them, Admit, Deny and Allege as Follows:

I.

That the defendants, and each of them, deny each and every allegation contained in plaintiff's Third Cause of Action, both generally and specifically.

As and for a Second, Separate and Further Answer and Defense to Said Third Cause of Action of Said Amended Complaint, Defendants, and Each of Them, Allege:

I.

The defendants, and each of them, here refer to all of the allegations contained in paragraphs I, II, III, IV, V, VI, VII, and VIII of their second affirmative defense against the plaintiff's First Cause of Action, and replead each of said allegations in this second, separate and further defense against the plaintiff's Third Cause of Action, with the same force and effect as [42] though they were fully set forth herein.

As and for a Third, Separate and Further Answer and Defense to Said Third Cause of Action of Said Amended Complaint, the Defendant, Vineland Elementary School District, for Itself Alone, Alleges as Follows:

I.

Said defendant here refers to all of the allega-

tions contained in paragraphs I, II, III, IV, V, VI, VII and VIII of its second affirmative defense against the plaintiff's First Cause of Action, and repleads each of said allegations in this third, separate and further defense against the plaintiff's Third Cause of Action, with the same force and effect as though they were fully set forth herein.

II.

That the said defendant here refers to all of the allegations contained in paragraph II of its third affirmative defense against the plaintiff's First Cause of Action, and repleads each of said allegations in this third separate and further defense against the plaintiff's Third Cause of Action, with the same force and effect as though they were fully set forth herein.

In Answer to the Fourth Cause of Action of Plaintiff Against the Defendants, Peter A. Bancroft and Vineland Elementary School District, the Defendants, and Each of Them, Admit, Deny and Allege as Follows:

I.

In answer to plaintiff's Fourth Cause of Action, insofar as said Fourth Cause of Action pertains to these defendants, the said defendants deny each and every allegation contained therein, both generally and specifically.

Wherefore, the defendants, Peter A. Bancroft and Vineland Elementary School District, and each of them, pray judgment as follows:

1. That plaintiff take nothing by its action.

2. That this Honorable Court adjudicate that the defendant, Vineland Elementary School District, is the owner of the C-46A airplane described in plaintiff's amended complaint and is entitled to the use and possession thereof [43] for educational purposes, free and clear of any and all claims or demands of any kind or nature by the plaintiff, or by any of the defendants named in plaintiff's amended complaint.

3. That the plaintiff pay the defendants the costs of this action.

4. For such and other further relief as to the Court may seem just and proper.

/s/ ROY GARGANO,

County Counsel for the County of Kern. Attorney
for Defendants Peter A. Bancroft and Vineland
Elementary School District. [44]

State of California,

County of Kern—ss.

Roy Gargano, being first duly sworn, deposes and says:

That he is the Attorney for the defendants Peter A. Bancroft and Vineland Elementary School District, in the foregoing action; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, ex-

cept as to matters therein stated upon information and belief, and that as to those matters he believes it to be true.

/s/ ROY GARGANO.

Subscribed and sworn to before me this 30th day of January, 1953.

[Seal] /s/ EDNA MURPHY,
Notary Public in and for the County of Kern, State of California.

My Commission Expires July 21, 1954. [45]

EXHIBIT A

Notice for Bids

Notice Is Hereby Given. that the Board of Trustees of the Vineland School District will receive bids up to 5:00 o'clock p.m., on the 20th day of January, 1951, at the office of the Superintendent of the said school district, for the sale by the district, of a C-46 Aircraft, No. 23645. The said aircraft may be inspected at Sunset School. Bidders are expressly notified that the aforesaid aircraft was acquired by the district from the Government of the United States and the War Assets Administration, subject to certain restrictions on the use thereof under the deed of conveyance, and the successful bidder will be required to secure the neces-

sary releases to said restrictions from the proper governmental agency of the United States of America.

All bidders are further notified that the successful bidder shall be required to furnish the district with a non-flyable, C-46 type aircraft, or equal, designed for educational purposes pursuant to and in accordance with the specifications on file in the office of the Superintendent, where said specifications may be examined and copied. Said successful bidder shall be required to furnish the district with said non-flyable aircraft, together with instruments of title thereto, at no cost whatsoever to the district.

Bids shall be in a sealed envelope, addressed to the Board of Trustees of the Vineland School District, Route 6, Box 207, Bakersfield, California, marked "Bids for Purchase of C-46 Aircraft," and will be opened at 10:00 o'clock p.m., on the 22nd day of January, 1951.

The Board reserves the right to waive any informality in bidding and also to be the sole judge of the value and merit of all bids, or to reject all bids.

By order of the Board of School Trustees, this 6th day of January, 1951.

/s/ FELIX LUNDQUIST,
Clerk.

[The foregoing Exhibit A was introduced in evidence as Vineland's Exhibit A.] [46]

EXHIBIT B

Agreement

This Agreement, made and entered into on this 28th day of February, 1951, at Bakersfield, California, by and between George C. Finn and Charles C. Finn, jointly, as Parties of the First Part, hereinafter referred to as "Contractors," and the Vine-land School District, a political subdivision of the State of California, located in Kern County, as Second Party, hereinafter referred to as the "District";

Witnesseth:

Whereas, the District did heretofore advertise for bids for the sale of a C-46 Aircraft No. 23645, in the manner prescribed by law and in the manner prescribed by the applicable provisions of the Education Code of the State of California, and

Whereas, the Contractors submitted their written bid to purchase said C-46 Aircraft No. 23645 from the District. Said bid was in accordance with the aforesaid "Notice Calling for Bids" and with the specifications adopted by the District and referred to in said notice, a copy of which specifications are attached hereto, marked "Exhibit A," and made a part hereof as if fully set out at length; and

Whereas, the bid submitted by the Contractors was the only bid received by the District and was duly accepted by the District in the manner provided by law, and in the manner provided by applicable provisions of the Education Code; and

Whereas, the parties are now desirous of executing a written agreement, setting forth the exact terms and conditions under which said bid was made by the Contractors and accepted [47] by the District, in accordance with the understanding of the parties and in accordance with the said specifications, marked "Exhibit A";

Now, Therefore, in consideration of the covenants, promises and terms and conditions hereinbelow set out, It Is Mutually Agreed between the parties, as follows:

I.

The District hereby transfers all of its right, title and interest in and to that certain C-46 Aircraft No. 23645 to the Contractors, effective immediately upon the execution of this agreement. Concurrently with the execution of this agreement the District agrees to execute a Bill of Sale and/or transfer of title to the said aircraft to the Contractors.

II.

The Contractors hereby agree, and do hereby accept the possession and title of said C-46 Aircraft No. 23645, as evidenced by this agreement, and the aforesaid Bill of Sale and/or transfer of title; provided, however, the Contractors agree that regardless of the transfer of possession and title of said C-46 Aircraft No. 23645, the sole use of said aircraft shall be and the same is reserved to the District for educational purposes only, until such time as all of the terms and conditions set forth in this agreement are fully performed by Contractors in

a reasonable and competent manner, provided, still further, that the Contractors shall have the right of entry on and in said C-46 Aircraft No. 23645 and the right to perform mechanical repairs thereon during all times which the District is not using said aircraft for educational purposes and after school hours. [48]

III.

For and in consideration of the transfer of all of its right, title and interest in and to the afore-described C-46 Aircraft No. 23645 by the District to the Contractors, the Contractors expressly Agree as follows:

(1) To furnish to the District one C-46 Aircraft No. 42-96563, together with a Bill of Sale and/or transfer of title executed by said Contractors, and to deliver said aircraft to the District upon the District premises, in such position as may be designated by the District. Said C-46 Aircraft No. 42-96563 to conform with all of the specifications contained in Paragraph I. of "Exhibit A," and of Paragraph II., "Exhibit A," sub-Sections 1 to 9, inclusive, and to conform with accepted standards for instructional aircraft in the area in which the District is located.

(2) To pay to the District the total sum of Five Thousand Dollars (\$5,000.00).

(3) To furnish the District with all of the material and equipment listed in Paragraph II. of the Specifications, marked "Exhibit A."

(4) To perform all of the services called for in the said specifications, marked "Exhibit A," in a competent and workmanlike manner, and in accordance with the standards for such work in the area in which the District is located.

(5) To post a faithful performance Bond in the sum of Twenty-one Hundred Dollars (\$2,100.00) concurrently with the execution of this agreement, to guarantee Contractors faithful performance of the terms and [49] conditions set forth in this agreement, and particularly in the aforesaid specifications, marked "Exhibit A," with the exception of that obligation incurred by the Contractors in Paragraph III (2) hereof.

IV.

It Is Expressly Agreed and Understood, that this agreement is contingent upon Contractor's ability to secure the necessary clearances from the Government of the United States of America on restrictions now existing on the use and possession of the aforescribed C-46 Aircraft No. 23645, by virtue of the Deed of Conveyance of said aircraft from the said Government of the United States to the District, and by virtue of related Federal laws on the use thereof. Therefore, notwithstanding any other provisions in this agreement, It is Understood and Agreed, as follows:

(1) The Contractors shall have a period of six (6) months from the date of this agreement to perform the terms and conditions of Paragraph III

hereof, and to secure the aforesaid clearances from the Government of the United States of America. In the event that the said Contractors are unable to secure the said Government clearances, then and in that event, the Contractors, at their option, shall be released from any and all obligations contained in this agreement, with the exception of those obligations incurred by the Contractors under the provisions of sub-Sections 12, 14 and 19 of Paragraph II, of the Specifications, attached hereto as "Exhibit A," and referred to in Paragraph III (3) hereof, it being the intent of the parties that the furnishing of those items specified in sub-Sections 12, 14 and 19 of Paragraph II of the said specifications by the Contractors [50] to the District shall be, and it is the consideration for the Contractors' release of any further obligation under this agreement.

(2 In the event the Contractors do not desire to exercise their option to terminate this agreement at the expiration of the aforesaid six (6) months' period, then and in that event the District shall, and does hereby extend the Contractors an additional six (6) months' period in which to perform under the terms of Paragraph III, and in which to secure the aforesaid Government clearances. In the event the said Contractors are unable to secure the said necessary Governmental clearances within said additional six (6) months' period, then and in that event the Contractors, at their option, shall be released from any and all obligations contained in this agree-

ment, with the exception of those obligations incurred by the Contractors under the provisions of sub-Sections 12, 14, 17 and 19 of Paragraph II of the specifications, attached hereto as "Exhibit A," it being the intent of the parties that the furnishing of those items specified in sub-Sections 12, 14, 17 and 19 of Paragraph II of the said specifications by the Contractors to the District shall be, and it is the consideration for the Contractors' release of any further obligation under this agreement.

(3) It is expressly agreed and understood, that in the event the Contractors exercise their option to terminate this agreement under the provisions of sub-Paragraphs (1) and (2), supra, they shall immediately reconvey said C-46 Aircraft No. 23645 by proper Bill of Sale to the District.

(4) In the event the Contractors are unable to secure the aforesaid Governmental releases within one (1) year from the date of this agreement, and in the event [51] the Contractors have not exercised their option to terminate this agreement, as heretofore provided, then and in that event said Contractors shall, nevertheless, be entitled to delivery of the aforesaid C-46 Aircraft No. 23645 for salvage purposes only; provided, satisfactory assurance is given to the District that existing Governmental restrictions will not be violated by the Contractors, or by any other person, firm or corporation, with or without the consent of the Contractors, and provided that the Contractors have fully performed all of the conditions of this agreement.

V.

It Is Expressly Agreed and Understood, that this agreement is subject to the following conditions:

(1) Neither party has relied upon any warranties, either written or oral, concerning the physical condition of the said C-46 Aircraft No. 23645, save and except that the District guarantees that at the conclusion of its period of use, as herein provided, the said aircraft shall be in as good a condition as it is at the present time, reasonable wear and tear excepted.

(2) The District shall not be responsible for the safekeeping of said C-46 Aircraft No. 23645 during the period which the District shall have the use thereof, other than for its own acts of negligence and the negligence of its employees, and it shall be the duty of the Contractors to carry proper insurance; provided, however, that the District does hereby agree to save the Contractors harmless from any and all claims which may arise by virtue of death, personal injuries to, or damage to the property, [52] either real or personal, of any and all persons while in or about said aircraft during the period of the District's use thereof, unless the said death, injuries or damages are caused through the negligence of the Contractors and/or their agents or employees.

(3) This agreement shall be binding upon and inure to the benefit of the respective heirs, executors, successors, administrators, assigns and legal representatives of the parties hereto.

(4) Any notices sent by either party to the other under this agreement, or in connection herewith, may be sent by "registered mail" to the last known address of the party receiving such notice.

(5) In the event either party is prevented from performing any terms or conditions of this agreement by any Act of God, said party shall be released from performance of said terms or conditions, unless the other party is willing to waive, in writing, his and/or its right to performance of those terms or conditions.

In Witness Whereof, these presents have been executed on the day and year first hereinabove written.

/s/ GEORGE C. FINN,

/s/ CHARLES C. FINN,

Parties of the First Part.

Witness:

/s/ VIOLET REYNOLDS.

VINELAND SCHOOL
DISTRICT,

By /s/ FELIX LUNDQUIST,

Party of the Second Part.

Witness:

/s/ HALLIE KILLEBREW.

[The foregoing Exhibit B was introduced in evidence as Vineland's Exhibit B.]

[Endorsed]: Filed February 2, 1953. [53]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS, GEORGE C.
FINN AND CHARLES C. FINN, TO
AMENDED COMPLAINT.

Defendants, George C. Finn and Charles C. Finn, appear, and in answer to plaintiff's amended complaint, admit, deny and allege as follows:

Answer to First Alleged Cause of Action

I.

Answering the first sentence of Paragraph II thereof, admit that defendants reside in or about the County of Los Angeles, California, and deny, generally and specifically, each and every other allegation therein contained.

II.

Answering Paragraphs III, IV, V, VI and XIII thereof, these answering defendants have no information or belief sufficient to enable them to answer the same, and basing their denial upon that ground, deny generally and specifically each and every allegation [54] in said paragraphs contained.

III.

Answering Paragraph VII thereof, deny generally and specifically each and every allegation therein contained.

IV.

Answering Paragraph XI, deny generally and specifically each and every allegation contained in

the first sentence therein beginning with the words "in violation" and ending with the words "C-46A airplane." Admit as to all other allegations in the first sentence of Paragraph XI.

Answering the second sentence of Paragraph XI, deny each and every allegation contained therein.

V.

Answering the first sentence of Paragraph XII, deny generally and specifically each and every allegation contained therein. Admit as to each and every allegation contained in the second sentence of Paragraph XII, and in this connection the answering defendants allege that in addition to their rights under the purchase from the Vineland School District, they secured acknowledgement of ownership to said aircraft, and registration to fly said C-46A Aircraft, from the plaintiff.

VI.

Answering Paragraph XIV, deny generally and specifically each and every allegation therein contained.

VII.

Answering the second sentence of Paragraph XV, deny generally and specifically each and every allegation therein contained.

Answer to Second Alleged Cause of Action

I.

These answering defendants repeat their answers to Paragraphs III, IV, V and VIII of the First

Cause of Action with the same force and effect as though they were fully set forth herein. [55]

II.

Answering Paragraph II thereof, deny generally and specifically each and every allegation therein contained.

III.

Answering Paragraph III thereof, deny each and every allegation therein contained, and in this connection allege the Vineland Elementary School District on or about February 28, 1951, did sell and transfer to defendants Finn, the full legal and beneficial title to the C-46 Airplane and delivered to them the possession of said airplane.

IV.

Answering Paragraph IV thereof, beginning with the word "Plaintiff" and ending with the words "non-flight instruction" defendants have no information or belief sufficient to enable them to answer the same, and basing their denial on that ground, deny each and every allegation therein contained; and further deny generally and specifically that portion thereof beginning with the words "and the defendant," and ending with the words "as scrap." In this connection, defendants allege that the Vineland Elementary School did purport to sell said aircraft to defendants as scrap, but with the consent of the plaintiff did sell and deliver the same to defendants in the condition of an assembled airplane which could be, and soon thereafter was, rendered flight-

worthy by defendants and flown by the authority conferred upon defendants by the plaintiff.

V.

Answering Paragraph V thereof, deny each and every allegation therein contained; and expressly deny that plaintiff has been damaged in the amounts, or either amount, set forth in said Paragraph V, or in any other amounts, or at all.

Answer to Third Alleged Cause of Action [56]

I.

These answering defendants repeat their answers to Paragraphs III, IV, V, VIII and IX of the First Cause of Action, and Paragraphs II, III and IV of the Second Cause of Action, with the same force and effect as though they were fully set forth herein.

II.

Answering Paragraph III thereof, deny generally and specifically each and every allegation therein contained, and in this connection, defendants allege they wilfully, intentionally and actively caused the Vineland Elementary School District to sell and deliver to defendants Finn the C-46A aircraft, with the knowledge and consent of the plaintiff; said consent of the plaintiff was wilfully, intentionally and actively secured by defendants.

III.

Answering Paragraph IV thereof, deny generally and specifically each and every allegation therein

contained, and expressly deny that plaintiff has been damaged in the amounts, or either amount set forth in Paragraph IV, or in any other amount, or at all; and allege that plaintiff has been benefitted by actions for which plaintiff claims damages.

Answer to Fourth Alleged Cause of Action

I.

These answering defendants repeat their answers to Paragraphs II, III and VII of the First Cause of Action, and Paragraph II of the Second Cause of Action, with the same force and effect as though they were fully set forth herein.

II.

Answering Paragraph II thereof, deny generally and specifically each and every allegation therein contained, and expressly deny that plaintiff has been damaged in the amounts, or either amount set forth in Paragraph II, or in any other amount, or [57] at all.

For a First Affirmative Defense Against Plaintiff's Amended Complaint and Each and All of the Alleged Causes of Action Therein Contained. These Defendants Allege:

I.

Prior to the time these defendants purchased said aircraft from defendant, Vineland Elementary School District, plaintiff informed these defendants

that they had the right to purchase said aircraft from Vineland Elementary School District and to fly the same, and that Vineland Elementary School District had previously received good title from plaintiff and had the right to sell said aircraft to these defendants; that plaintiff thereby induced these defendants to purchase and they did in fact purchase said aircraft from Vineland Elementary School District for flight purposes; that at said time plaintiff granted these defendants permission to fly said aircraft and authorized them to register it in their names; that by reason of the foregoing, plaintiff is not entitled to any relief under its pleadings and is estopped from recovering anything in this case.

Wherefore, these defendants pray that plaintiff take nothing under its Amended Complaint and that they be dismissed with their costs.

GEORGE C. FINN and
CHARLES C. FINN,

By /s/ GEORGE C. FINN,
In Propria Persona.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed February 16, 1953. [58]

United States District Court, Southern District of
California, Central Division

No. 14309-HW—Civil

CHARLES C. FINN,

Plaintiff,

vs.

UNITED STATES OF AMERICA, COLONEL
J. L. ULRICSON,

Defendants.

CROSS-COMPLAINT

(Damages)

Plaintiff complains of Defendants and each of them, and for cause of action alleges:

I.

That Plaintiff now, and at all times herein mentioned, was the owner of, and entitled to the possession of that certain C-46A Aircraft, registration number N-111H, presently located at Nellis Air Force Base, Las Vegas, Nevada.

II.

That on the 28th day of January, 1953, the Defendants, without right and without the consent of Plaintiff, by force and violence, unlawfully took possession of said aircraft, and have ever since detained by force of arms, and do now so detain, possession thereof against the will and without the consent of the Plaintiff.

III.

That by reason of said unlawful seizure and detention of Plaintiff's property, widespread publicity was given to said action and especially in business circles, and Plaintiff has been injured in his reputation and credit, and has been deprived of said property, and has been deprived of his means of livelihood and has been unable to pay his just debts and otherwise has suffered an injury to property in this State. [60]

For a Further Separate and Second Cause of Action Alleges:

I.

That Defendant, United States of America, made a verbal and written binding confirmation of Plaintiff's ownership in said aircraft, and that Plaintiff provided the agents of the United States with all facts, laws, documents, transactions and other evidence of ownership by the Plaintiff, Plaintiff having purchased said aircraft from the Vineland School District, Bakersfield, California.

II.

That Defendant, United States of America, or any Agency thereof, possesses no fact, no law, no document, no transaction and no evidence of ownership of said aircraft by the United States of America.

III.

That notwithstanding the foregoing, the Defendant, United States of America, through its Agents

and employees, Walter Binns, Clyde Downing and Leila Bulgrin, caused to be filed in the United States District Court, Southern Division, an action to recover Seventy Thousand Dollars (\$70,000.00), or the aircraft, and damages of One Hundred Twenty-eight Thousand Dollars (\$128,000.00) for Defendant's loss of use of Plaintiff's aircraft; this, despite the fact that Defendant, United States of America, sold said Aircraft five years prior to the Court action, to Vineland School District, Bakersfield, California, for the sum of Two Hundred Dollars (\$200.00); and that during this five-year period, not one cent had been paid by the Vineland School District to the United States of America for its non-use of said Aircraft, since said Defendant had deprived itself of any further use of the aircraft by virtue of said sale, coupled with a warranty to "reduce the aircraft to scrap" if disposed of within three (3) years of acquisition. [61]

IV.

That on the 18th day of September, 1952, Agents Binns, Downing and Bulgrin, (pursuant to an amendment of the above-mentioned Court action) having knowingly falsely adopted unto their use, California Code of Civil Procedure, Sections 509, 510, 511, 512, 513 and 514, though unavailable to Federal District Courts in original actions, and having filed false claims of ownership, and having caused to be filed false Affidavits of seizure and service by U. S. Marshal, David Hayden did un-

lawfully seize Plaintiff's aircraft at Kern County Airport, Bakersfield, California.

V.

That on or about the 2nd day of February, 1953, said aircraft having been removed from under such unlawful seizure to Nevada, Agents Binns, Downing and Bulgrin conspired with Colonel J. L. Ulricson, Commanding Officer of Nellis Air Force Base, Las Vegas, Nevada, to again unlawfully seize Plaintiff's aircraft, this time by force and violence, and to retain possession thereof, and to deny Plaintiff rightful use thereof by force of arms; and Defendant Ulricson did seize, and does now detain possession of said aircraft against the will, and without consent of the Plaintiff.

For a Further Separate and Third Cause of Action
Alleges:

I.

That pursuant to the removal of said aircraft to Nevada from the unlawful seizure under the California Code, Agents Binns, Downing and Bulgrin caused Plaintiff to be falsely charged with a felony, alleging the stealing of his own aircraft and transporting same in foreign commerce to Mexico.

II.

That Agents Binns, Downing and Bulgrin caused Plaintiff's arrest by the Federal Bureau of Investigation on the said false charges, though the aircraft had never been in Mexico, and its [62] location was

unknown to the Federal Bureau of Investigation at the time of arrest.

III.

That when Plaintiff notified Defendant, United States of America, as to the location of the aircraft in Nevada, Agents Binns, Downing and Bulgrin caused Plaintiff to be falsely charged with a felony alleging the stealing of Plaintiff's own property by transporting said aircraft across a State line to Nevada. That Plaintiff was falsely arrested without a Warrant, and falsely imprisoned for four days and nights therefor.

IV.

That the Los Angeles Federal Grand Jury returned a "No Bill" upon evidence submitted by Agents Binns, Downing and Bulgrin in an attempt to support an indictment on their false charges.

V.

That failing to sustain these false charges. Agent Bulgrin threatened Plaintiff with bodily harm.

VI.

That Agents Binns, Downing and Bulgrin falsely charged Plaintiff with criminal contempt of Court, alleging removal of the aircraft by the Plaintiff from the custody of the Court, violating a Court order to not disturb the aircraft, removing the aircraft from the jurisdiction of the Court, and violating a Court order giving the aircraft to the possession of the Defendant, United States of America.

VII.

That a trial was duly held in the United States District Court, Southern Division, Judge Harry Westover presiding, on June 15th, 1953, and said Court returned an order that Plaintiff was not in contempt of court on any of four counts as charged. A copy of said ruling is hereto attached. [63]

For a Further Separate and Fourth Cause of Action Alleges:

I.

That Plaintiff does not admit to the authority of the Federal Government, under Rule 64 of Federal Rules of Civil Procedure, to utilize existing California Statutes in an original action of Claim and Delivery in the Federal District Court, but since the Defendant, United States of America has claimed California Code of Civil Procedure, Sections 509, 510, 511, 512, 513 and 514, as its sole authority for seizing Plaintiff's property, and thus has restricted its claim, either in law or in argument to this State Statute, Defendant, United States of America, must comply with the correct legal procedure therein contained.

II.

That having adopted unto their use the powers set forth under California Civil Code of Procedure, Sections 509 to 514, inclusive, by virtue of Federal Rules of Civil Procedure, Rule 64, the Agents of the United States of America failed to correctly hew to the just and recognized forms therein set forth.

III.

That while the Defendant did set forth as its sole legal justification for the seizure of Plaintiff's property, the jurisdiction prescribed under the Sections of California Code of Civil Procedure herein set forth, Defendant did not comply with the correct procedure for the seizure of the property under said Statutes (which shall, for all purposes forthwith, be referred to in this Complaint as "Claim and Delivery," as indeed it is known to all who come before the law in the just Courts of this sovereign State).

IV.

That Defendant did seize said aircraft knowing full well that Defendant had not fulfilled the requirements of California law. [64]

V.

That Defendant, United States of America, did so with malicious aforethought to damage the Plaintiff by depriving him of use of his legal property, by holding him up to ridicule in the public eye, and by defaming him as a man of honor in the eyes of those who would enter under prior circumstances into profitable business relations with the Plaintiff.

VI.

That Defendant, United States of America, did so, if not in purpose, with the knowledge that by taking such action Defendant violated the laws of this Commonwealth, by so using the laws of California as a subterfuge.

VII.

That Defendant violated the requirements set forth in the California Code of Civil Procedure as follows:

1. No Affidavit of Ownership was filed by Defendant prior to seizure of the aircraft.

2. No Service of process of seizure was made on Plaintiff before seizure, after seizure, or at all.

3. Aircraft was seized without filing the seizure process of the Court.

4. A false Affidavit of Seizure was executed on September 18, 1952, by U. S. Marshal David Hayden.

5. A false Affidavit of Service on Plaintiff of seizure of aircraft was executed by David Hayden, U. S. Marshal, on September 18, 1952, and was filed October 31, 1952.

6. The above-mentioned false Affidavit of Service and seizure was altered after filing, in an attempt to destroy the Affidavit.

7. A false Affidavit of seizure was executed by U. S. Marshal David Hayden on October 13, 1952, and was filed on October 31, 1952. [65]

8. A false return of service on Plaintiff was executed by U. S. Marshal David Hayden on October 13, 1952, and filed October 31, 1952.

9. At no time did Plaintiff receive Notice of Seizure, nor was Plaintiff given an opportunity, as

provided by law, to accept to the Surety, or to have a hearing on the seizure, or to Bond the aircraft back.

10. That the property was never, at any time, as provided by law, taken into the possession of the Marshal, nor was any Notice of Seizure placed on the aircraft, nor was any care taken of it.

11. At the present writing, August 26, 1953, no Notice of Seizure, or any other written communication confirming the due process of law in this seizure had ever been served on the Plaintiff.

12. That said aircraft, and its rightful use thereof, at all times, has been, and now is withheld from Plaintiff by threats of arrest and imprisonment, and by force of arms of the Military establishment of the United States of America.

For a Separate and Fifth Cause of Action Alleges:

I.

That Agents Binns, Downing and Bulgrin agreed to withhold prosecution of their action filed in the Federal District Court upon the request of Congressman Chet Hollifield; for the withholding of prosecution, Plaintiff was to give his aircraft to a fictitious Corporation to be owned by Charles C. Finn, George C. Finn and one Michael J. O'Rourke, former Postmaster of Beverly Hills, California. The one-third ($\frac{1}{3}$) interest in the corporation owned by Michael J. O'Rourke, was to be enjoyed silently by Congressman Hollifield [66] and Attor-

ney Paul Ziffren, formerly Collector of Internal Revenue, Chicago, Illinois, for their influence in fixing the case in Washington.

II.

That Plaintiff, after receiving written assurance from Binns, Downing and Bulgrin (Agents), because of the above arrangement, that "no action would be taken in the Finn case without first giving Finns a ten-day notice of any action, or proposed action," declined to form such a Corporation, and that Defendant forthwith instituted the foregoing illegal actions, false charges, false arrests and false affidavits.

III.

That Defendant, United States of America, through its Agents Binns, Downing and Bulgrin, Ulricson and others in the Department of Defense, Department of Justice, Department of Commerce, Department of Treasury and Department of State, has spent in excess of One Hundred and Fifty Thousands Dollars (\$150,000.00) of Government funds, executed the aforementioned false affidavits of seizure, false arrests, false claims and committed perjury for the sole purpose of coercing Plaintiff into a settlement of Defendant's illegal Court actions which Defendant could not substantiate in a just court.

IV.

That said "settlement" is necessary to Defendant, United States of America, to protect certain Government officials who have illegally disposed of

thirty to sixty million dollars (\$30,000,000) (\$60,000,000) worth of aircraft, privately owned by schools and other institutions, to certain chosen individuals engaged in speculation in the world aircraft market, including the Iron Curtain countries. In reference to this "settlement," the Defendant, United States of America, has offered to dismiss their One Hundred Ninety-Eight Thousand Dollar (\$198,000.00) Court action against Plaintiff for the sum of Twenty-five Hundred Dollars [67] (\$2,500.00) paid in hand to the Defendant, United States of America, which Plaintiff has refused to do.

V.

That the trial of said action, taken by the Agents of Defendant, United States of America, to determine ownership in the aircraft was set for July 13, 1953. This was more than a year from the commencement of action, but the said Agents intentionally, and with malice, had the trial postponed until November, 1953, and taken off the calendar for resetting in November, 1953, for the sole purpose of forcing Plaintiff, through financial inequities, to settle the case out of Court.

VI.

That in all of their malicious deeds, the Agents of Defendant, United States of America, on orders from Washington, acted wilfully and deliberately with malice and intent to deprive Plaintiff of his property without due process of law, and to commit him to prison in order to prevent the expose of

Defendant's illegal sale of eleven hundred and thirty-five (1,135) or more similar privately-owned aircraft by Government officials in Washington.

VII.

That the foregoing acts of Defendant were, at all times, known to Defendant to be false, groundless, oppressive and malicious, and were for the purpose of, and did cause, injury to property of the Plaintiff, and deprived him of his constitutional rights.

VIII.

That there is now due, owing and unpaid by reason of said injury to property, the sum of Two Million, Nine Hundred and Ninety-Nine Thousand, Nine Hundred and Ninety-Nine Dollars (\$2,999,999.00).

Wherefore, Plaintiff prays judgment against the Defendant, and each of them, for monies due to Plaintiff as herein alleged, and for such other relief as to the Court may deem just.

/s/ CHARLES C. FINN,
Plaintiff.

It is so ordered:

Date: Sept. 10, 1953.

/s/ HARRY C. WESTOVER,
Judge. [68]

(Copy)

In the United States District Court, Southern
District of California, Central Division

No. 22705—Criminal

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE C. FINN, CHARLES C. FINN,

Defendants.

Honorable Harry C. Westover, Judge, Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

WALTER S. BINNS,

United States Attorney; by

LEILA F. BULGRIN,

Assistant United States Attorney.

For the Defendants:

BERNARD B. COHEN, ESQ.,

HENRY S. COHEN, ESQ.

March 30, 1953—10:00 A.M.

The Clerk: No. 22705, United States v. Finn.

Mrs. Bulgrin: Ready for the Government.

Mr. Cohen: Your Honor, Saturday morning in the mail at 9:00 o'clock, I received a six-page memorandum.

The Court: I received it also, and I think I have read all the cases I want to read with regard to this matter.

Mr. Cohen: May I be heard in regard to the case? [69]

The Court: No. I think I have heard all the argument. I am satisfied in my own mind as to what the law is with regard to the case. Whether or not the Circuit will agree, I don't know, but I am satisfied in my own mind as to what the law is. In this case last week I found that the plane in question had never been taken into custody by the Marshal. The Government wishes me to change that opinion. I can't change the opinion. I can't change the facts of the case. The facts are very evident.

The plane was never in the possession of the government, that is, until after these proceedings were filed. It is in the possession of the government now, as I understand, but it was not under these proceedings. The statutes of the State of California provide several methods in which property can be kept in status quo until title can be determined.

One is by attachment. The other is by garnishment and another is by claim and delivery.

When the statute provides specific remedies such as this, the statute must be strictly complied with. I don't think that the Marshal ever took this plane into his possession.

The statute says personal property must be taken into actual possession. If it is too big, they must

provide a keeper. There is no such thing as constructive possession in claim and delivery, as far as I know. The Marshal never even attempted to pin a notice upon the plane. All he did was take a look at it at from 50 to 75 feet away and then go and tell the custodian of the airport that he had taken it. That doesn't comply with the statute at all.

My ruling last week relative to taking into possession of the plane by the Marshal still stands. The Government never did have possession of the plane.

We come to the next proposition argued by the government relative to the removal of the property from the district while it [70] was in the possession of the court. Well, it never was in possession of the court, never has been in possession of the court. There can't be any contempt proceedings in removing property based on the proposition it was in the possession of the court when it never was in possession of the court. The court never made any order relative to the plane at all. The court never ordered the Marshal to pick up the plane, the court never ordered anybody to pick up the plane. The only order in this case was an order initiated by the District Attorney's office.

The next problem presented to the court was if one is guilty of contempt when he moves property out of the jurisdiction of the court, when the court is then trying to determine the title to the property. In other words, it is the contention of the District Attorney that if an action is filed in the Federal Court in claim and delivery or in any way to determine the title of personal property, it is

contempt if that property is moved out of the jurisdiction of the court.

Well, again I say the statute provides numerous ways in which the property can be held in status quo. It can be held until the title is determined. In this case the government attempted to do that, but didn't do it. I don't think it is the law that if property is in litigation, it is contemptuous if that property is removed. It would be contemptuous if it was in the possession of the court, it would be contemptuous if it was under a writ of attachment, it would be contemptuous if it was held under claim and delivery proceedings.

In other words, if an action was filed in this court to determine the title to the property, no attempt was made by the Government to hold that property, and then the parties moved it out of the jurisdiction of the court, then it is the theory of the government it is contempt. [71]

Well, I have read numerous cases since this case has been before me. I don't know how many. There are certain things that have been impressed time after time by the various courts.

First, this is a criminal proceeding. If this is a criminal proceeding, then the defendants are presumed to be innocent until proven guilty beyond a reasonable doubt. Consequently, if there is a reasonable doubt in my mind, then the defendants must be held not guilty.

Certainly, there is more than a reasonable doubt in my mind that the moving of property out of the jurisdiction of the court while an action has been

filed and no claim has been filed on that property, that is contemptuous.

Then we come to the final argument of the government, and possibly the one that has the most merit. That is whether or not an order made by the court was an order and the defendants violated that order.

When the government came into court relative to the so-called order, it was represented to the court that the plane was then in the possession of the government. If the court had been told that the plane was not in the possession of the government, the court probably would not have made an order relative to interference with the property.

I will say this. I think the District Attorney was of the opinion and was sincere in her statements that the property had been taken over by the government, was in possession of the government, but the facts don't sustain that contention at all.

So we have a problem here. Where property is not in the possession of the government, the government asks for a restraining order restraining the defendants from interfering with the plane. There was no order made. There was a request only made and the statement of the court was, "All right." The question is, is that an order? [72]

Again we come to the question of reasonable doubt. Is there a reasonable doubt that that was an order? I think there is. I think there is a reasonable doubt that there was an order. If there is a reasonable doubt that is an order, then, of course, I will have to hold the defendants Finn are not

guilty of the contempt with which they have been charged.

I want to say to the Finns they have been skating on very thin ice. They have impressed the court on numerous occasions in this proceeding of being willing to determine for themselves what the law is and take the law into their own hands. I am giving them the benefit of the doubt in this case, not because I don't think they should be punished. I really believe they should be punished in some way, but I think the facts in this case are such that there is a reasonable doubt that they are guilty of contempt, and so I am going to make an order now absolving the defendants from contempt.

* * *

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 30th day of March, A.D. 1953.

/s/ S. J. TRAINOR,
Official Reporter.

[Endorsed]: Filed September 10, 1953. [73]

[Title of District Court and Cause.]

AMENDMENT TO CROSS-COMPLAINT

(Damages)

Plaintiff hereby amends Cross-Complaint No. 14,309-HW filed September 10, 1953, as follows:

I.

On Page 8, Line 24, Paragraph IV. thereof, delete the words—"Certain Government Officials," and substitute the following:

"Jess Larson, former Administrator, General Services Administration.

"R. E. Minnich, Deputy Chief, General Services Administration.

"T. Lamarr Caudle, former Assistant Attorney General, and certain other government officials."

/s/ CHARLES C. FINN.

Amendment Approved for Filing.

/s/ HARRY C. WESTOVER,
Judge.

Lodged September 11, 1953.

[Endorsed]: Filed September 14, 1953. [74]

[Title of District Court and Cause.]

ANSWER OF SEABOARD SURETY
COMPANY, A CORPORATION

Seaboard Surety Company, a Corporation, answers plaintiff's amended complaint on file in the above-entitled matter, as follows:

I.

Alleges that this answering defendant is a corporation, duly organized and existing under and by virtue of the laws of the State of New York, and is authorized to and has been transacting business in the State of California. [75]

II.

That this answering defendant at all times herein mentioned has been engaged in the business of writing surety bonds, replevin bonds and other bonds of similar character.

III.

That on or about the 11th day of March, 1952, defendants, George C. Finn and Charles C. Finn, stated and represented to this answering defendant that they were the owners of the airplane mentioned and described in plaintiff's amended complaint, and relying upon their statement of ownership, and of the fact that the said defendants did actually own said airplane, did write a replevin bond in the Superior Court of Fairfield County, Connecticut. In connection with said application for bond, the said defendants, George C. Finn and Charles C. Finn, did purport to, by written instru-

ment, sell, assign, transfer and set over unto this answering defendant the airplane mentioned and described in plaintiff's amended complaint, as security for the bond hereinbefore mentioned.

IV.

This answering defendant makes no claim to said airplane if the said George C. Finn and Charles C. Finn had no rights thereto. That this answering defendant had no knowledge of the facts alleged in plaintiff's amended complaint, but believed that the said defendants, George C. Finn and Charles C. Finn, were the owners of the airplane described in said amended [76] complaint.

V.

That this answering defendant has never had possession of said airplane, and had no dealings concerning the said airplane other than as herein stated and for the purpose herein set forth.

VI.

This answering defendant denies that it had any interest or took any activity in any manner as to any of the facts alleged in plaintiff's amended complaint, other than as herein set forth. and also denies that it makes any claim to said airplane, other than as herein set forth.

Answer to Plaintiff's Second Cause of Action Set
Out in Said Amended Complaint

I.

Answering defendant has not sufficient information or belief to enable it to answer the allegations

contained in Paragraphs I, II, III, IV and V of the second cause of action set out in said complaint, and basing its denial thereon, denies generally and specifically all of said allegations, and each and every part thereof, insofar as they affect this answering defendant only. [77]

Answer to Plaintiff's Third Cause of Action
Set Out in Said Amended Complaint

I.

Answering defendant has not sufficient information or belief to enable it to answer the allegations contained in Paragraphs I, II, III and IV of the third cause of action set out in said complaint, and basing its denial thereon, denies generally and specifically all of said allegations, and each and every part thereof, insofar as they affect this answering defendant only.

Answer to Plaintiff's Fourth Cause of Action
Set Out in Said Amended Complaint

I.

Answering defendant has not sufficient information or belief to enable it to answer the allegations contained in Paragraphs I and II of the fourth cause of action set out in said complaint, and basing its denial thereon, denies generally and specifically all of said allegations, and each and every part thereof, insofar as they affect this answering defendant only:

Wherefore, answering defendant prays that plaintiff take nothing against this answering defendant; that it have judgment for its costs, and for such other and further relief to which it may be entitled.

WALLACE AND CASHIN,

By /s/ W. W. WALLACE,
Attorneys for Seaboard Surety Company, a Corporation, Defendant.

Duly Verified.

[Endorsed]: Filed September 10, 1953. [78]

[Title of District Court and Cause.]

CROSS-COMPLAINT FOR DAMAGES FOR
MISREPRESENTATION AND FOR
MONIES LAID OUT AND EXPENDED

Comes now Seaboard Surety Company, a Corporation, and files this, its cross-complaint against cross-defendants George C. Finn and Charles C. Finn, and in support thereof, alleges as follows:

I.

That cross-complainant is a corporation duly organized [80] under and by virtue of the laws of the State of New York; that it is transacting business in the State of California, and in the State of Connecticut, and is duly authorized by the laws of those States to transact business therein.

II.

That cross-complainant is engaged in the business of writing surety bonds of all kinds.

III.

That on or about the 11th day of March, 1952, cross-defendants made an application to cross-complainant to write on behalf of cross-defendants a surety bond, to be filed in the Superior Court of Fairfield County, Connecticut, in an action entitled "George C. Finn vs. Lee Mansdorf and Mallard Industries, Inc.," for the replevin of a certain airplane described in said application; and in order to induce cross-complainant to write said replevin bond, stated and represented to cross-complainant that cross-defendants were the owners of one Curtiss-Wright Airplane C-46, Aircraft Serial Number 1-232, Nationality and Registration Mark N111H, and represented that said airplane was located in the Hangar of International Airports, Inc., at Lockheed Air Terminal, Burbank, California; and said cross-defendants did at said time, by written instrument, purport to grant, bargain, sell, assign, transfer and set over unto cross-complainant the said airplane as security for the replevin bond which cross-complainant was asked to and did write for said cross-defendants in the action then pending in the Fairfield County [81] Superior Court of the State of Connecticut. That cross-complainant believed the representations; that cross-complainant did not know at that time that the said cross-defendants were not the owner of said Curtiss-Wright

airplane, and would not have written said replevin bond had cross-complainant been advised that cross-defendants did not own said airplane, or that the facts as alleged in the amended complaint of the plaintiff in the above-entitled action were true, or that the claims set forth in said amended complaint were then made as to said airplane.

IV.

That cross-complainant is informed and believes, and therefore alleges, that the cross-defendants at all times knew all of the facts set forth in the amended complaint of plaintiff in the above-entitled action, and that they did not have title to said airplane.

V.

That cross-defendants promised and agreed to reimburse cross-complainant for any sums cross-complainant was compelled to pay by reason of the execution of the replevin bond hereinbefore set forth.

VI.

That in said action in the Fairfield Superior Court in the State of Connecticut, a judgment was rendered against the [82] cross-defendants, and by reason of the bond executed and delivered by this cross-complainant, cross-complainant was compelled to and did on October 7th, 1952, pay the sum of \$2,945.79.

VII.

That by reason of the misrepresentations of cross-defendants as to their ownership of said airplane,

they secured from cross-complainant said replevin bond, and as a result thereof, cross-complainant has been damaged in the sum of \$2,945.79. That said sum has not, nor has any part thereof, been paid.

Wherefore, cross-complainant prays judgment against cross-defendants, and each of them, in the sum of \$2,945.79, together with interest thereon at the rate of 7% per annum from October 7th, 1952, until paid; for costs of suit, and for such other and further relief to which cross-complainant may be entitled.

WALLACE AND CASHIN,

By /s/ W. W. WALLACE,

Attorneys for Cross-Complainant Seaboard Surety Company, a Corporation.

It Is So Ordered: Sept. 10, 1953.

/s/ HARRY C. WESTOVER,
Judge.

Duly Verified.

[Endorsed]: Filed September 10, 1953. [83]

[Title of District Court and Cause.]

MOTION TO DISMISS CROSS-COMPLAINT

The Cross-Defendant, United States of America, moves the Court as follows:

1. To dismiss the Cross-Complaint on the ground that the Court lacks jurisdiction over the subject matter thereof.

2. To dismiss the Cross-Complaint on the ground that it fails to state a claim against the Cross-Defendant, United States of America, upon which relief can be granted. [85]

Dated: January 26, 1954.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief, Civil Division;

/s/ LOUIS LEE ABBOTT,
Assistant U. S. Attorney; Attorneys for Cross-Defendant, United States of America.

[Endorsed]: Filed January 27, 1954. [86]

[Title of District Court and Cause.]

MINUTES OF THE COURT—AUGUST 26, 1954

Present: Hon. Wm. C. Mathes, District Judge.

Counsel for Plaintiff:

Louis Lee Abbott, Assist. U. S. Atty.

Counsel for Defendant:

Henry S. Cohen.

Proceedings:

Hearing on motion of U.S.A. to dismiss cross-complaint and to strike cross-complaint.

Defendants Finn present an affidavit which is ordered filed.

Attorney Cohen presents a statement in writing requesting the Court to be released from and as counsel for defendants Finn.

The Court orders Attorney Cohen to appear in this case as *amicus curiae* at all hearings herein.

Attorney Cohen informs the Court that his appearance as ordered by the Court is over his objections, and argues in opposition to motion of the plaintiff to dismiss and to strike cross-complaint of defendants Finn.

Defendant Charles Finn argues in opposition to the motion of the plaintiff to dismiss and to strike cross-complaint.

The Court orders motion of the plaintiff to dismiss cross-complaint granted; with 20 days allowed defendants Finn to file an amended counterclaim.

It Is Ordered that pre-trial hearing set for 9-20-54, vacated and pre-trial hearing reset for 10-25-54, 2 p.m.

A True Copy. Certified this 3rd day of Sept., 1954.

EDMUND L. SMITH,
Clerk. [93]

[Title of District Court and Cause.]

COUNTERCLAIM

Defendants, as a first defense, repeat each and every denial contained in defendants' answer to plaintiff's allegations contained in plaintiff's amended complaint, with the same force and effect as though they were fully set forth herein, and said defendants' answer is made a part hereof.

As and for a Separate and Affirmative Defense to Plaintiff's Allegations Contained in Plaintiff's Amended Complaint, Defendants Allege:

I.

That plaintiff, United States of America, through its agents, seized defendants' property, a C-46A, designated N 111 H, aircraft, without consent of defendants, and without due process of law, in violation of defendants' constitutional rights guaranteed under the Fifth Amendment of the Constitution of the United States of America. [94]

II.

That at all times prior to filing the complaint, plaintiff was informed of the sale of said C-46A Aircraft by Vineland School District to defendants, on February 28, 1951, and plaintiff, on April 14, 1952, through its agency Civil Aeronautics Administration, accepted and filed proof of ownership of said aircraft in defendants, and granted the necessary registration certificate required to fly said air-

craft under the laws of the United States, as a civil aircraft.

III.

That said registration was granted to defendants by plaintiff for the sole purpose of releasing said aircraft from any restrictions that might prohibit the use of the aircraft for flight purposes, and that plaintiff was informed by defendants that, upon acquiring said registration certificate, defendants were authorized to fly said aircraft and would not be obliged to reduce it to its basic material content.

IV.

That plaintiff waived the alleged breach of contract for failing to reduce the aircraft to its basic material content, as set forth in plaintiff's amended complaint, by an amendment to War Assets Administration Regulation 4, appearing in the Federal Register January 3, 1946, and limiting any scrap requirements under Clause 8304.11 (b) to three years after acquisition of the property, per item 8 of the alleged agreement between Vineland School District and plaintiff.

V.

That plaintiff illegally adopted unto its use, the Claim and Delivery statutes of the State of California, Sections 509 to 521, and allegedly seized said aircraft from defendants, and thereby consented to payment of damages resulting from any wrongful seizure or false claim against the property to the extent [95] of twice the value of the

property and thereby guaranteed the same as though a bond had been posted, and plaintiff did libel itself therefor.

VI.

That in an action for contempt of court brought against defendants by plaintiff for removing said property from custodia legis, and possession of the plaintiff, Judge Harry Westover ruled that the said aircraft was never in custodia legis and was not held by plaintiff according to statutes of California, or under any proceeding of Judge Westover's court.

VII.

That plaintiff now holds the said aircraft from defendants without their consent, by force and threat of imprisonment, at the Nellis Air Force Base, Las Vegas, Nevada, outside the territorial jurisdiction of this Court.

As and for a Counterclaim, Defendants Allege:

I.

That plaintiff is now in possession of the property described in plaintiff's amended complaint, claiming title thereto under an alleged breach of contract between plaintiff and Vineland School District, by Vineland School District, and induced by defendants George C. Finn and Charles C. Finn.

II.

That on February 28, 1951, a contract was entered into by Vineland School District and defend-

ants Finn, in which all right, title and interest to said described property, a C-46A aircraft, was transferred to defendants Finn. Subsequently, on April 14, 1952, a Bill of Sale for said property was duly executed and delivered by Vineland School District to defendants Finn, for a consideration of \$21,000.00 paid according to a certain contract dated February 28, 1952. Said Bill of Sale and other evidence [96] of title were recorded in the Bureau of Registration, Civil Aeronautics Administration, Washington, D. C.

III.

That plaintiff accepted said Bill of Sale and other evidence of ownership of said aircraft as in defendants Finn, upon granting a certificate of registration of said aircraft, as a civil aircraft.

IV.

That by virtue of said Bill of Sale, and registration certificate N 111 H, defendants are the owners and are entitled to said C-46A aircraft N 111 H.

V.

That as the result of plaintiff's illegal seizure of said aircraft, defendants have and will be denied the use of said aircraft during the pendency of said action, all to their further damage in the sum of \$8,000.00 per month.

VI.

That as a result of plaintiff's illegal seizure of said aircraft, and the lack of maintenance by plaintiff, during which time the aircraft was in "dead

storage'' unhangared, and exposed to the elements, upon information and belief, defendants allege the aircraft to have deteriorated in value approximately \$15,000.00.

VII.

That it has been necessary for defendants to incur costs, expenses and attorney's fees as a result of plaintiff's illegal seizure, and are informed and believe, and therefore allege, will amount to the full sum of \$12,000.00.

Wherefore, defendants demand judgment against the plaintiff:

(1) Dismissing the plaintiff's complaint, and that the Court adjudge alleged claims of plaintiff to be invalid [97] and void, that title to said C-46A aircraft be quieted in these defendants, and that they recover possession of their property from the plaintiff in the same condition as when taken from them.

(2) For the sum of \$15,000.00 for deterioration of the aircraft if it is not restored to the same condition as when taken upon return of aircraft to defendants.

(3) For the sum of \$70,000.00 if property cannot be had.

(4) For the sum of \$8,000.00 per month for each month said aircraft was withheld from use of defendants, by plaintiff.

(5) For such other and additional relief as the Court may deem just.

/s/ GEORGE C. FINN,

/s/ CHARLES C. FINN,

Defendants in Pro. Per.

Duly Verified.

[Endorsed]: Filed September 15, 1954. [98]

[Title of District Court and Cause.]

MINUTES OF THE COURT—OCTOBER 11, 1954

At Los Angeles, California.

Present: Honorable Wm. C. Mathes, District Judge.

Counsel for Plaintiff: Louis Lee Abbott.

Defendants: George C. Finn and Charles
C. Finn in pro. per.

PROCEEDINGS

For hearing motion of Defendants Finn for an Order requiring Laughlin E. Waters to answer questions propounded in the taking of deposition on Sept. 15, 1954, or to be held in contempt of Court, and

For hearing motion of plaintiff for an order terminating the examination of Laughlin E. Waters commenced on Sept. 22, 1954.

Court Orders motion of Defendants Finn for an questions, etc., denied, and motion of plaintiff for an

Order requiring U. S. Att'y Waters to answer questions, etc., denied, and motion of plaintiff for an Order terminating examination of U. S. Att'y Waters granted.

It Is Ordered that deposition of Defendants Finn, now being taken by Gov't, is terminated, on motion of said Defendants.

It Is Ordered that cross-complaint of Seaboard Surety Co. is dismissed for lack of jurisdiction over the subject matter.

It Is Ordered that cause is set for trial Oct. 26, 1954, 10 a.m.; Gov't to give formal notice to all parties.

EDMUND L. SMITH,
Clerk. [100]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER OF DEFENDANT
INTERNATIONAL AIRPORTS, INC.

Comes Now Defendant International Airports, Inc., and, by leave of court, files this amendment to its Answer:

For a Second, Separate and Affirmative Defense,
This Answering Defendant Alleges That:

I.

This answering defendant refers to paragraphs I, II, III, IV, and V of its First Affirmative Defense and by reference makes them a part hereof.

II.

On or about July 10, 1946, plaintiff sold, transferred and delivered to Defendant Vineland School District (Vineland) the C-46 aircraft in suit. Defendant took possession of said aircraft on or about July 25, 1946, and retained such possession until February 28, 1951. [101]

III.

Prior to August 31, 1951, (to wit, about February 28, 1951,) Vineland sold and transferred possession of said aircraft to George C. Finn and Charles C. Finn (the Finns).

IV.

Such sale and transfer of possession was by an agreement in writing with the Finns, a copy of which is annexed to the answer of Vineland herein, marked Exhibit "B." Said Exhibit "B" is incorporated herein by reference. By said Exhibit "B" (1) Vineland transferred to the Finns all of its right, title and interest in and to said C-46 and agreed to execute a "Bill of sale and/or transfer of title" therefor to the Finns; and (2) the Finns did "hereby accept the possession of title of said C-46 * * *"

V.

Vineland executed such bill of sale to the Finns by date of February 28, 1951. A copy thereof is in evidence as part of International's Exhibit "A," and by reference is incorporated herein. Said bill of sale recites in part that Vineland, as the "owner of the full legal and beneficial title" of said aircraft, does "hereby sell, grant, transfer and de-

liver all of his right, title and interest in and to such aircraft unto "the Finns, and Vineland therein certifies that said aircraft is "not subject to any mortgage or other encumbrance."

VI.

Said bill of sale was presented to the Civil Aeronautics Administration (CAA) in Washington, D. C., on about April 16, 1951, for the purpose of registration pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended (49 U.S.C. Sec. 501, et seq.). The CAA was well aware that said C-46 aircraft was one disposed of by the United States to Vineland under the provisions of the Surplus Property Act of 1944 and Regulation 4 thereunder. Said CAA further was well aware of the provisions [102] of a certain War Assets Administration Form 65 agreement claimed by the United States to be applicable to said aircraft.

VII.

At or about the date last mentioned certain officials of the CAA inquired of certain officials of the Federal Security Administration, and otherwise, concerning the existence, if any, of restrictions upon the ownership by Vineland of said aircraft, and its sale to the Finns. Said officials, acting in the exercise of their official duties or with the knowledge and consent of other officials so empowered to act, waived and released said restrictions and consented to the registration of said aircraft by the Finns, and the issuance to them on April 16, 1951, by the administrator of Civil Aeronautics of a Certificate

of Registration for said aircraft. A copy of said Certificate of Registration is in evidence as part of International's Exhibit "A."

VIII.

Such consent to the registration aforesaid was reasonably calculated to, and did, induce members of the public, including this answering defendant, to believe that the Finns had first submitted to CAA a genuine bill of sale from Vineland, and that there was no reason, insofar as plaintiff was concerned, why Vineland's transfer of title to the Finns should not be given effect.

IX.

Further, by the facts recited in paragraph II hereof, plaintiff represented to the world that Vineland was the owner of said airplane.

X.

By the facts recited in paragraph III, Vineland represented to the world that the Finns were the owners of said airplane.

XI.

Defendant International Airports, Inc., relied and had a [103] right to rely upon the representations aforesaid, and so relying, loaned the money and did the things described in its first affirmative defense herein.

XII.

By reason of the foregoing, Plaintiff has waived its rights, if any, in said aircraft and ought not

be permitted to deny as against Defendant International Airports, Inc., that Vineland had full title to said aircraft, and Vineland ought not be permitted to deny that it transferred title to the aircraft to the Finns.

Wherefore, this answering defendant prays that plaintiff take nothing as against this answering defendant; that the interests, and each of them, of said defendant as herein set forth be recognized and protected as against any claims herein alleged by plaintiff; and for such other and further relief as to the court may seem just.

/s/ A. J. BLACKMAN,
Attorney for Defendant
International Airports, Inc.

Receipt of copy acknowledged.

Lodged November 2, 1954.

[Endorsed]: Filed November 5, 1954. [104]

[Title of District Court and Cause.]

SPECIAL VERDICT

[Fed. R. Civ. P. 49 (a)]

We, the jury in the above-entitled cause, unanimously find as follows:

Interrogatory (1)

At the time of the making of the agreement between Vineland Elementary School District and

defendants Finn on February 28, 1951, [see Vineland's Exhibit B], did defendants Finn, or either of them, have either knowledge or notice that the plaintiff, United States of America, Claimed restrictions upon the use or sale of the airplane in suit [see plaintiff's Exhibit 1]?

Finding of the Jury ["Yes or No"]: Yes. [106]

Interrogatory (2)

Did defendant Vineland Elementary School District intend to transfer title to the airplane in suit to defendants Finn at any time before all necessary consents and releases and waivers of the Government had been procured?

Finding of the Jury ["Yes" or "No"]: No.

Interrogatory (3)

Did defendants Finn intend to induce defendant Vineland Elementary School District to breach any agreement between the Government and the School District [see plaintiff's Exhibit 1]?

Finding of the Jury ["Yes" or "No"]: No.

Interrogatory (4)

Did defendant Peter Bancroft intend to induce defendant Vineland Elementary School District to breach any agreement between the Government and the School District?

Finding of the Jury ["Yes" or "No"]: No.

Interrogatory (5)

At what time or times during the period from February 28, 1951, until October 26, 1951, were defendants Finn, or either of them, in actual possession of the airplane in suit?

Finding of the Jury [State date or dates]:
Oct. 23, 1951.

Interrogatory (6)

At what time or times during the period from February 28, 1951, until October 26, 1951, were defendants Finn, or either of them, in constructive possession of the airplane in suit?

Finding of the Jury [State date or dates]:
February 28, 1951, to Oct. 23, 1951.

Interrogatory (7)

At the time when physical possession of the airplane in suit was given to defendants Finn, did defendant Peter Bancroft and defendant Vineland Elementary School District intend that such possession be for the sole purpose of enabling work to be done on the aircraft which could not be done on the school grounds?

Finding of the Jury: ["Yes" or "No"]:
Yes. [107]

Interrogatory (8)

At the time on August 31, 1951, when defendant International Airports, Inc., advanced \$15,000 to

defendants Finn, did International Airports, Inc., in good faith believe that defendants Finn were the true and lawful owners of the airplane in suit?

Finding of the Jury [“Yes” or “No”]: Yes.

Interrogatory (9)

Did defendant, International Airports, Inc., in good faith believe that defendants Finn were the true and lawful owners of the airplane in suit during the period after August 31, 1951, when International Airports, Inc., performed labor and furnished materials of the value of \$10,200 for the repair and improvement of the aircraft?

Finding of the Jury: [“Yes” or “No”]: Yes.

Interrogatory (10)

Did defendant, International Airports, Inc., have either knowledge or notice of the existence of interests and claims of defendant Vineland Elementary School District to the aircraft in suit under the agreement between the School District and defendants Finn [see Vineland’s Exhibit B] at the time International Airports, Inc., advanced the sum of \$15,000 to defendants Finn [see International’s Exhibits B, C, E, F and G]?

Finding of the Jury: [“Yes” or “No”]: Yes.

Interrogatory (11)

Did defendant, International Airports, Inc., have either knowledge or notice of the existence of interests and claims of defendant Vineland Elementary

School District to the aircraft in suit under the agreement between the School District and defendants Finn, at the time International Airports, Inc., performed labor and furnished materials of the value of \$10,200 for the repair and improvement of the aircraft?

Finding of the Jury: ["Yes" or "No"]: Yes.

Interrogatory (12)

Did defendant, International Airports, Inc., have either knowledge or notice, on August 31, 1951, when International Airports, Inc., advanced \$15,000 to defendants Finn, that the plaintiff, United States of America, claimed restrictions upon the use or sale of the airplane in suit [see defendant International's Exhibit A and plaintiff's Exhibit 1]?

Finding of the Jury: ["Yes" or "No"]: Yes. [108]

Interrogatory (13)

Did defendant, International Airports, Inc., have either knowledge or notice that the plaintiff, United States of America, claimed restrictions upon the use or sale of the airplane in suit at any time during the period after August 31, 1951, when International Airports, Inc., performed labor and furnished materials of the value of \$10,200 for the repair and improvement of the aircraft?

Finding of the Jury: ["Yes" or "No"]: Yes.

Interrogatory (14)

Have Government restrictions as to sale and use of the airplane in suit ever been released by any authorized representative of the Federal Security Agency?

Finding of the Jury: ["Yes" or "No"]: No.

Interrogatory (15)

Have Government restrictions as to sale and use of the airplane in suit ever been waived by any authorized representative of the Federal Security Agency?

Finding of the Jury: ["Yes" or "No"]: No.

Interrogatory (16)

What was the fair market value in cash, of the airplane in suit on July 25, 1946, at the time of delivery of the aircraft by the War Assets Administration to the Vineland Elementary School District [see plaintiff's Exhibit 4]?

Finding of the Jury: \$5,000.00

Interrogatory (17)

What was the fair market value, in cash, of the airplane in suit on February 28, 1951, at the time of the making of the agreement between Vineland Elementary School District and defendants Finn [see Vineland's Exhibit B]?

Finding of the Jury: \$20,000.00

Interrogatory (18)

What was the fair market value, in cash, of the airplane in suit during the period February 28, 1951, to October 26, 1951?

Finding of the Jury: From \$20,000.00 to \$25,000.00. [109]

Interrogatory (19)

What was the fair market value, in cash, of the airplane in suit on April 14, 1951, at the time of the delivery of the bill of sale from Vineland Elementary School District to defendants Finn [see plaintiff's Exhibit 5]?

Finding of the Jury: \$25,000.00

Interrogatory (20)

What was the fair market value in cash, of the airplane in suit on July 3, 1952, at the time of the commencement of this action or suit by the United States of America as Plaintiff against the defendants?

Finding of the Jury: \$50,000.00

Los Angeles, California, November 5, 1954.

/s/ FRANK T. STRIKER,
Foreman of the Jury.

[Endorsed]: Filed November 5, 1954. [110]

[Title of District Court and Cause.]

PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM OF LAW

* * *

VII.

Remedies

The primary contention of the Government in this action is that it has had title and the right to possession of the airplane in suit from February 28, 1951, to the present date. Plaintiff has in this and prior memoranda of law asserted that the status of the Government is that of a bailor after breach of a material condition of bailment or, in the alternative, that of a grantor who has conveyed property subject to a right of reverter after occurrence of the condition of reverter. In so arguing, the Government has asserted that while the legality of the transactions between the Vineland Elementary School District and the defendants Finn may be material to determining property rights as between those parties, questions of compliance with the California Education Code are not material to a finding of breach of the conditions of bailment, or occurrence of the condition of reverter. By failing to perform its affirmative duties created by the Agreement, the School District has permitted occurrence of the conditions terminating whatever interest it may have had in the airplane in suit.

The relief sought by plaintiff in the event that the Court adopts either of the above "title" theories is an adjudication that it is and has been since February 28, 1951, the owner of and entitled to the possession of the airplane in suit. Plaintiff also seeks damages for wrongful detention during the period commencing February 28, 1951, and ending September 18, 1952.

If the Court rejects the Government's title theories, but adjudicates that as between Vineland and the other defendants, Vineland is the owner of the airplane in suit and entitled to the possession thereof, then the Government prays for appropriate relief by equitable decree enjoining all defendants from further violation of the terms and conditions of the Agreement (plaintiff's [128] Exhibit 1). For the reasons stated in Paragraph IV above, the Government further submits that specific performance of the terms and conditions of plaintiff's Exhibit 1 may be decreed as against all parties to this action even if some party other than the Government or the Vineland Elementary School District is determined to be the owner and entitled to possession of the airplane in suit. In short, the Government seeks to specifically enforce plaintiff's Exhibit 1 as against all parties regardless of the determination of rights as between the several defendants, in the event that the Government is not declared to be the owner and entitled to possession of the airplane in suit. [Rule 54 (c), Federal Rules of Civil Procedure.]

The Government also seeks damages for breach of the terms of plaintiff's Exhibit 1 as against the defendant Vineland Elementary School District, and also as against the defendants Finn. In the event that the Court determines that title and right to possession is in some party other than the Government or the Vineland Elementary School District, damages properly recoverable for breach and inducement to breach are equal to the fair market value of the airplane at the time of the purported sale from Vineland to the defendants Finn. If the Court orders return of the aircraft in suit to the defendant Vineland Elementary School District and further decrees that hereafter all parties shall be enjoined from conduct inconsistent with the terms and conditions of the Agreement, plaintiff's Exhibit 1, the Government has nevertheless been damaged by breach of the provisions of that instrument to the extent that it has been deprived of the educational benefit to be derived from the use of the airplane in suit by Vineland during the period from October 23, 1951, to date. In the latter contingency the Government would pray for damages in a sum to be fixed by the Court in the exercise of its discretion, and suggests that such damages would in no event be less than interest [129] on the value of the aircraft for the period during which it has been diverted from educational use.

Just as Vineland's argument that its transactions with the defendants Finn were void under Cali-

ifornia law are not material to determination of whether there has been a termination of bailment or occurrence of the condition of reverter, so also must that claim of illegality fail when asserted as a defense to the Government's cause of action for breach of contract. The School District may not have sold anything to the Finns because it did not comply with California law; it nevertheless has failed to comply with its affirmative covenants including the covenant to use the airplane in suit for non-flight instructional purposes by a tax-supported educational institution.

In the event that the Court sees fit to order return of the airplane in suit to the Vineland Elementary School District, the Government submits that all costs incident to preparation of the airplane for flight and its actual removal from the Nellis Air Force Base to Vineland, should be borne by the Vineland Elementary School District and that the judgment of the Court should so provide. Only by reason of Vineland's own wrongful act is the airplane today at a point distant from the District.

With respect to the Counterclaim of the defendants Finn, the Government asserts that it has had title to and the right to possession of the airplane in suit at all times since February 28, 1951; that as between the defendant Vineland and the defendants Finn, the defendant Vineland has a superior claim to title and possession of that aircraft; and that for either or both of those reasons no recovery on

the counterclaim may be had. Should the Court rule adversely to the Government with respect to each of the propositions last stated, the defendants Finn would nevertheless be precluded from recovering damages for retention of the airplane during the period in which it has been in the [130] possession of the Government subsequent to September 18, 1952, since the uncontradicted evidence in this cause demonstrates that as between the defendants Finn and the defendant International Airports, Inc., the defendant International Airports, Inc., has had the right to possession of the airplane in suit at all times from a date prior to September 18, 1953, to the present date.

Plaintiff attached a copy of the Opinion of the United States District Court for the Eastern District of Michigan, Southern Division, in *United States v. School District No. 2, et al.*, No. 11007, to Plaintiff's Memorandum of Law filed October 5, 1954. A certified copy of that Opinion, together with certified copies of the Judgment and of the Findings of Fact and Conclusions of Law are filed herewith. Copies of each of the said documents have been served upon all counsel and parties not represented by counsel.

Plaintiff attached a copy of the Opinion of the Superior Court of Fairfield County, Connecticut, in *George C. Finn v. Mansdorf, et al.*, to plaintiff's Reply Memorandum of Law, filed November 3, 1954. A certified copy of that Opinion is filed herewith.

Copies of the Opinion have been served upon all counsel and parties not represented by counsel.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant United States Attorney, Chief, Civil
Division;

/s/ LOUIS LEE ABBOTT,
Assistant United States Attorney, Attorneys for
Plaintiff.

[Endorsed]: Filed November 15, 1954. [131]

[Title of District Court and Cause.]

STIPULATION OF DISCLAIMER
AND FOR JUDGMENT

Come Now the plaintiff, United States of America, and the defendant, Seaboard Surety Company, a Corporation, and stipulate as follows:

1. That the defendant, Seaboard Surety Company, disclaims any right, title or interest in or to the airplane in suit, to wit: a C-46A Curtiss Commando airplane, United States Army Serial No. 42-3645, Manufacturer's Serial No. 1-232, Civil Aeronautics Administration Registration No. 111H.

2. That the judgment of this Court herein may include a declaration that the defendant, Seaboard

Surety Company, has no right, title or interest in or to the said airplane in suit.

3. That the judgment of this Court herein may provide that plaintiff shall not recover costs as against the defendant, Seaboard Surety Company, and that the defendant, Seaboard Surety [151] Company, shall not recover costs as against the plaintiff.

Dated: November 30, 1954.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant United States Attorney, Chief of Civil
Division;

/s/ LOUIS LEE ABBOTT,
Assistant United States Attorney, Attorneys for
Plaintiff, United States of America.

WALLACE & CASHIN,

By /s/ A. W. WALLACE,
Attorneys for Defendant Seaboard Surety Com-
pany, a Corporation.

The above Stipulation is approved, this 1st day
of December, 1954.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed December 2, 1954. [151-A]

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

Mathes, District Judge:

The United States sues for declaratory relief [28 U.S.C. §§1345, 2201-2202], breach of contract, and claim and delivery [Calif. Code Civ. Proc. §§509-521; Fed. Rules Civ. Proc., Rule 64, 28 U.S.C.A.], alleging the Government to be "the owner and * * * now entitled to the immediate possession of a certain C-46A Curtiss-Commando airplane bearing United States Army serial number 42-3645." [C.A.A. Reg. No. 111 H; 58 Stat. 765, 50 U.S.C.A. App. [152] §§1611-1646; 40 U.S.C. §§471-492.] Plaintiff also seeks damages from defendant Vineland Elementary School District for breach of contract, and from defendants Finn and Bancroft for inducing breach of contract.

After World War II the War Assets Administration was engaged in the disposal of war-surplus aircraft and, to effect the greatest public use of such aircraft, gave preference to public bodies and educational institutions such as defendant Vineland Elementary School District near Bakersfield, California. In June and July of 1946 defendant School District evidenced an interest in acquiring one of these war-surplus aircraft, and possession of the C-46A transport airplane in suit was transferred to the School District on July 25, 1946, by virtue of a "Release of Custody" executed pursuant to an "Agreement" [W.A.A. Form 65] signed a month

earlier. Defendant School District paid the Government a cash consideration of \$300, and thereafter used the airplane as a classroom for over four years.

In 1950 defendants Finn desired to acquire the airplane from the School District and offered cash and certain labor and materials in exchange for it. Defendant School District published an invitation for bids and, defendants Finn being the only bidders, on February 28, 1951, defendant Bancroft, the Superintendent of Schools, transferred possession of the airplane to defendants Finn. [153]

Thereafter defendants Finn, following negotiations in Washington with officials of the War Assets Administration and the Civil Aeronautics Administration, procured the issuance in their names by the C.A.A. of a certificate of ownership of the aircraft.

Because the airplane needed substantial repair before it could be considered airworthy, defendants Finn had defendant International Airports, Inc., do the necessary work. On August 31, 1951, defendants Finn, as mortgagor, and defendant International, as mortgagee, executed a chattel mortgage on the airplane as security for a loan of \$15,000. On the same date and as part of the same transaction, defendants Finn leased the airplane to defendant International.

By virtue of the provision of Rule 64 of the Federal Rules of Civil Procedure, the Government invoked the summary procedure known in the law of California as "Claim and Delivery of Personal

Property” [Calif. Code Civ. Proc. §§ 509-521], and thereby was enabled to cause the Marshal of this Court to seize possession of the aircraft in suit prior to trial. [Id. §§ 511-512, 518, 521.] The seizure took place on September 15, 1952, and the Government has been in possession of the aircraft since that date. [154]

Defendant Seaboard Surety Company filed a disclaimer of any interest. The remaining defendants answered and asserted claims prior to those of the Government. Defendants Finn filed a counterclaim for damages for the Government’s alleged wrongful seizure and detention of the aircraft.

These are the facts in brief. The demand of defendants Finn for a jury trial having been tardily filed, an advisory jury was empaneled. [Fed. Rules Civ. Proc., Rules 38(b), 39(c), 28 U.S.C.A.] Upon the close of the evidence, a form of special verdict comprising twenty interrogatories was submitted to the jury. The unanimous findings of the jury in answer to the interrogatories will be adopted as findings of the Court, and are appended hereto.

The Government’s claim of ownership and for breach of contract depend on the documents signed by the various parties as governed by the applicable statutes and regulations. The claim of ownership will be discussed first.

At the time of the transaction between the Government and defendant School District, the Surplus

Property Act of 1944 provided in part: "Disposal to local governments and nonprofit institutions * * * The [Surplus Property] Board shall prescribe regulations for the disposition of surplus property to States and their political subdivisions [155] and instrumentalities, and to tax-supported and nonprofit institutions * * * In formulating such regulations the Board shall be guided by the objectives of this Act and shall give effect to the following policies to the extent feasible and in the public interest: (1) (A) Surplus property that is appropriate for school, classroom, or other educational use may be sold or leased * * * [58 Stat. 770, 50 U.S.C.A. App. § 1622(a) 1944.]

The applicable regulation then provided in part that: "The disposal agency shall compile a list of such items and shall ascertain fixed prices * * * The disposal agency is authorized to dispose of such property to educational or public-health institutions or instrumentalities at the prices so approved * * * [T]he property will not be resold to others within three years * * *" [32 C.F.R. 1946 Supp. §8304.11.] [Emphasis added.]

In determining, first of all, the nature of the interest in the airplane acquired by defendant School District the intention of the parties as disclosed by the documentary evidence must be noted. The War Assets Administration, in its form sheet of instructions addressed to the School District, outlines in Instruction III "How to Purchase," and refers in Instruction VI to the "Price" of the

airplanes. [U.S. Govt. Printing Office 16-47792-1.] Moreover the quoted [156] regulation itself refers to "prices" and "resold." [32 C.F.R. 1946 Supp. § 8304.11.] Defendant Bancroft filled out a "Purchase Order" [W.A.A. Form 66] on June 25, 1946. On July 10, 1946, the War Assets Administration issued a "Sales Receipt" which mentions "purchases" in the name of defendant School District, and the "price." [WAA-LA-12.]

The authority of the War Assets Administration to pass title is made clear by the above-quoted provisions of the statute that: "Surplus property * * * appropriate for school, class-room, or other educational use may be sold or leased * * *" [58 Stat. 770; 50 U.S.C.A. App. § 1622(a)(1)(A)(1944).]

But most important, at the time the airplane was delivered to defendant School District, a sale was the only permissible method of disposal; for the regulation then provided: "[A]fter June 30, 1946, transport aircraft shall be disposed of only by sale." [32 C.F.R. 1946 Supp. § 8304.7.] Interpreted in the light of the statute and the regulation, the documentary evidence compels the conclusion that in 1946 full title to the airplane in suit was transferred by the War Assets Administration to Vineland Elementary School District.

The contention is made, however, that violation by defendant School District of restrictions upon use and disposal [157] of the aircraft caused title to revert to the Government. Form 65 contains no reservation of power in the Government to revest

title to the property, nor any provision that title will automatically revert on violation of the restrictions. Moreover restrictions upon title which restrain alienation and use are not favored by the law. [See: *Davis v. Gray*, 16 Wall. (83 U.S.) 203, 230 (1872); *Los Angeles University v. Swarth*, 107 Fed. 798, 803 (9th Cir. 1901).] So where, as here, there are “no express terms creating a condition, no clause of re-entry nor words of any sort indicating such purpose, the conclusion is unavoidable that the obligation in question is a covenant * * *” [*Columbia Railway, etc., Co. v. South Carolina*, 261 U.S. 236, 248, 250 (1923)] for the breach of which damages would be the only remedy. [See: *United States v. Michigan*, 190 U.S. 379 (1903); *Northern Pacific Railway v. Townsend*, 190 U.S. 267 (1903); *Emigrant Co. v. County of Adams*, 100 U.S. 61, 71 (1870).]

It is conceded that defendant School District on February 28, 1951, by a C.A.A. form bill of sale signed by defendant Bancroft, did “hereby sell, grant, transfer, and deliver [to defendants Finn] all of * * * [its] right, title, and interest in and to such aircraft * * *” Earlier, on October 9, 1950, defendant Bancroft had signed a “Bill of Sale” which was typed on the letterhead stationery of the [158] School District and, referring to the rules and regulations of the W.A.A., declares: “We hereby sell * * *” These documents show a plain intention on the part of defendant School District to pass title to the airplane to defendants Finn.

It is urged nonetheless that the sale to defendants Finn is void because the consideration included labor and materials as well as cash. The applicable California statute provides in part that the "board of any school district may sell * * * for cash * * *" [Cal. Ed. Code § 19801.] This statute is permissive only; the auxiliary verb "may" does not limit the authority conferred to cash sales. It follows that at least as early as February 28, 1951, defendant School District passed valid title to defendants Finn.

On May 28, 1952, defendant International Airports, Inc., commenced an action in the Superior Court of the State of California, in and for the County of Los Angeles, for claim and delivery of the airplane; and on June 9, 1952, defendant International filed in the State Court an action for foreclosure of the chattel mortgage. Defendants Finn answered the complaints, and counterclaimed that defendant International had failed to lend additional funds as required by the agreement and had failed to pay agreed rentals under the lease. The two cases were consolidated for trial and the State Court rendered [159] judgment in favor of defendant International. An appeal from this judgment is now pending.

In keeping with the well-founded policy that litigants may try their causes but once, this Court in its discretion will leave final determination of the controversies between defendants Finn and International Airports to the State courts, since a

determination of those claims is not essential to decision of the other claims at bar. [See: *Brillhart v. Excess Ins. Co.*, 316 U.S. 491 (1942); *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227 (1937); *Highway Ins. Underwriters v. Nichols*, 85 F. Supp. 527 (E.D. Okla. 1949); *Veeder-Root, Inc., v. Henrietta*, 52 F. Supp. 918 (D. Conn. 1943).]

To decide plaintiff's claim here it is sufficient to hold that the Government has neither right to possession of nor valid claim of title to the airplane in suit.

The alleged breach and inducing breach of contract are next to be considered. At the time of the sale to defendant School District, the relevant regulation governing disposal of surplus airplanes provided in part: "The disposal agency shall establish procedures pursuant to which educational * * * institutions or instrumentalities may make written application for surplus aeronautical property available for disposal * * * Such procedures shall include * * * (2) a certification [160] of the purposes for which the property is to be acquired, and in the case of aircraft an agreement that it will not be flown except for purposes of research or experiment in connection with the science of aeronautics, and (3) an agreement that the property will not be resold to others within three (3) years of the date of purchase without the consent in writing of the disposal agency unless it is mutilated or otherwise rendered unfit for use except as scrap." [32 C.F.R. 1946 Supp. § 8304.11(b).]

The printed Form 65 used by plaintiff to set forth the agreement between the Government and defendant School District did not contain the restrictions of the regulation just quoted, but contained instead the terminology of a superseded regulation. [See: 10 F.R. 10362, 5460, § 8304.4(c) (1945).] The result is that Form 65, as executed by the Government and defendant School District, provides in parts "Vineland Elementary School District * * * hereby certifies and agrees as follows * * *

(6) That the acquired property will not be used for any actual flight purposes. (7) That all acquired property, when unfit for the above purpose, will be sold only as scrap and then only after it shall have been rendered completely unfit and useless except for its basic material content. Sales consummated within three years of the date of acquisition must have the prior approval of the [161] Disposal Agency."

Thus Form 65, as executed, prohibits entirely all flight use, whereas subsection (2) of the applicable regulation then permitted both research and experimental flight. Moreover the restrictions as to disposal contained in Form 65 are without limit in point of time, whereas subsection (3) of the amended regulation limits restrictions upon disposal to the period of three years next following purchase.

Clearly, then, the restrictions as to disposal and use in Regulation § 8304.11(b) (2), (3) and those set

forth in the executed Form 65 are contradictory and cannot stand together. The language of the regulation being mandatory, and having the force of law to the extent authorized by the statute, must control. [United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); see: United States v. San Francisco, 310 U.S. 16, 30 (1940); Ashwander v. T.V.A., 297 U.S. 288, 338. (1936); United States v. Weisbrod, 202 F. 2d 669 (7th Cir. (1953)).]

This conclusion requires that, if valid, subsection (2) of Regulation § 8304.11(b) must be read into Form 65 in lieu of the above-quoted agreement (6) of Form 65 as executed here. The result follows that defendant School District and the Government agreed that the airplane in suit "will not be flown except for purposes of research or [162] experiment * * *"

This holding is buttressed by the settled rule that a valid administrative regulation binds the administrator himself equally with others [United States ex rel. Accardi v. Shaughnessy, supra, 347 U.S. 26; Chapman v. Sheridan-Wyoming Co., 338 U.S. 621, 629 (1950); Bridges v. Wixon, 326 U.S. 135, 153 (1945); see Jeffries v. Olesen, 121 F. Supp. 463, 476 S. D. Cal. 1954)], the same as though the provisions of the regulation were prescribed in terms by the statute. [Atchison, T. & S. F. Ry. v. Scarlett, 300 U.S. 471, 474 (1937).]

Assuming now that subsection (2) of the quoted regulation restricting flight of surplus aircraft was intended to remain effective beyond the three-

year period specified in subsection (3), and so serve as a sort of covenant running with the aircraft, the question is confronted whether such limitations upon use are authorized by the statute—i.e., whether the regulation is valid.

Throughout the Act broad authority to promulgate regulations is conferred, but the Congress expressly directed that the formulation of regulations “shall be guided by the objectives of this Act.” [58 Stat. 770, 50 U.S.C.A. App. § 1622 (1944).]

Included in the “Declaration of general objectives” [163] of the Act are these: “* * * (b) to give maximum aid in the re-establishment of a peacetime economy of free independent private enterprise, the development of the maximum of independent operators in trade, industry, and agriculture, and to stimulate full employment; * * * (d) to discourage monopolistic practices and to strengthen and preserve the competitive position of small business concerns in an economy of free enterprise; * * * (f) to afford returning veterans an opportunity to establish themselves as proprietors of * * * enterprises; * * * (p) to foster development of new independent enterprise; * * * [and] (s) to dispose of surplus Government-owned transportation facilities and equipment in such manner as to promote an adequate and economical national transportation system * * *” [58 Stat. 766, 50 U.S.C.A. App. § 1611 (1944).]

It is seen that the stated objectives of the Act are replete with references to “free independent

private enterprise," "independent operators," "small business concerns," "afford[ing] returning veterans an opportunity * * * as proprietors," and "new enterprises." Defendants Finn wanted to do these very things; their objective was to operate the airplane in suit themselves as a new and independent and free private enterprise. [164]

The provision of subsection (2) of Regulation § 8304.11(b). prohibiting flight of the airplane "except for purposes of research or experiment" runs directly counter to the Congressional objectives expressed in the statute. Being contrary to, rather than in accordance with, "the provisions * * * [and] objectives of this Act," the regulatory provision in question is invalid. Comparable provisions of Form 65 are *pari ratione* invalid as well.

Like considerations of reason and policy raise doubts also as to the validity of the limitations on disposal contained in above-quoted subsection (3) of the regulation, but it is not necessary to resolve them here. The three-year restriction on unfettered disposal having expired at the time of the sale to defendants Finn, the School District was free to sell the aircraft as such without violating the provisions of subsection (3) of the regulation. [See *United States v. School District, et al.*, No. 11007 (E.D. Mich. 1954).]

The jury found that defendants Finn and Bancroft did not intend to induce a breach of the contract; neither did they induce one. The School District's agreement in Form 65, as read in the

light of the quoted regulation, was not breached by sale of the airplane to defendants Finn. [165]

There remains for determination the counterclaim of defendants Finn for loss of use from the time possession of the aircraft was seized at the suit of the Government on September 15, 1952, and for the full value of the airplane in the event the Government does not return it.

This counterclaim is compulsory in character, since "it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." [Fed. Rules Civ. Proc., Rule 13(a), 28 U.S.C.A.] Accordingly, federal jurisdiction over the subject matter need not rest upon independent grounds, but may be grounded upon jurisdiction over the subject matter of the main suit. [See: *Moore v. New York Cotton Exchange*, 270 U.S. 593, 609 (1926); *American Mill Co. v. American Surety Co.*, 260 U.S. 360, 364 (1922); *Texas Co. v. Bourne, etc., Co.*, 68 F. 2d 104, 106 (4th Cir. 1938); *Cooling Tower Co. v. Brann & Co.*, 1 F. 2d 178 (9th Cir. 1924); *Hartley Pen Co. v. Lindy Pen Co.*, 16 F.R.D. 141 (S.D. Cal. 1954).]

Sovereign immunity, both as to liability and as to suit [cf. *Hopkins v. Clemson Agricultural College*, 221 U.S. 636, 646 (1911)], has been impliedly waived by the act of the Government in bringing the action, thereby voluntarily submitting *pars pro toto* all controversies [166] involved, including compulsory counterclaims, to the jurisdiction of this

ists independently of the Constitution and statutes. [United States v. Land, *supra*, 44 F.Supp. at 715; see James v. Dravo Contracting Co., 302 U. S. 134, 137 (1937).]

As said in United States v. General Motors Corp., 323 U.S. 373, 378 (1945), "Property * * * denote[s] the group of rights in the citizen's relation to the physical thing, as the right to possess, use, and dispose of it. * * * The constitutional provision is addressed to every sort of interest the citizen may possess." [Emphasis added.]

The Government took possession of and prevented use or disposition of the airplane by others; thus, it has taken for the as-yet-undetermined period of detention the "group of rights" of which the "property" is comprised.

It is for the courts to decide whether the use is in fact a public use [Shoemaker v. United States, 147 U.S. [169] 282, 298 (1893)], and the Supreme Court has just observed that "The concept of public welfare is broad and inclusive." [Berman v. Parker, 348 U.S. (November 22, 1954).] Here it was a substantial benefit to the public to have the airplane under Government control pending adjudication of its claims. A judgment might be of little value if the airplane were not available for satisfaction. [Cf. Nat. Union Marine Cooks v. Arnold, 348 U.S. (November 22, 1954).]

It follows that "just compensation" must be provided for the loss of use. [See Rank v. Krug, 90

F.Supp. 773, 786 (S.D. Cal. 1950).] "Such compensation means the full and perfect equivalent in money of the property taken." [United States v. Miller, 317 U.S. 369, 373 (1943).]

Under the circumstances here the constitutional requirement of "just compensation" is met by holding the Government liable, as would be a private citizen under the law of California, for all damages proximately resulting from wrongful seizure and detention of personal property. [28 U.S.C. § 2674; Cal. Code Civ. Proc. § 667; *Nahhas v. Browning*, 181 Cal. 55, 183 Pac. 442 (1919); cf. 28 U.S.C. §§ 2674, 2680; *United States v. Miller*, *supra*, 317 U.S. at 380.]

Defendants Finn have been wrongfully deprived of the possession and use of the airplane, the fair market [170] value of the use of which in the condition in which found at the time of seizure on September 15, 1952, was and now is the sum of \$15 per day.

The fair market value of the aircraft itself at the date of commencement of this action on July 3, 1952, has been found by the jury to be \$50,000. Adopting this finding, the court will fix \$50,000 as the fair market value of the airplane at the time the Government seized possession on September 15, 1952.

Judgment will be ordered in favor of all defendants dismissing the Government's complaint on the merits. Judgment also will be ordered in favor of defendants Finn on their counterclaim (1) requir-

ing the Government to restore to them possession of the aircraft in suit, at Scotty's Air Strip in the State of Nevada, in the same order and condition as when the Government seized possession on September 15, 1952, ordinary wear and tear excepted; or (2) in the alternative, to pay to defendants Finn the sum of \$50,000 as the fair market value of the airplane [see 28 U.S.C. § 2412]; and (3) in either event, to pay to defendants Finn the fair market rental value of \$15 per day from September 15, 1952, until either the aircraft shall have been delivered into the possession of defendants Finn [171] or their agents, successors or assigns, as provided in (1) above, or until the sum of \$50,000 shall have been paid, as provided in (2) above.

All adjudications in favor of defendants Finn will be made subject and without prejudice to any prior rights of defendant International Airports, Inc., which may now exist or be hereafter adjudicated in the State courts.

Defendants will lodge with the Clerk within ten days findings of fact, conclusions of law, and judgment accordingly, to be settled pursuant to local rule 7.

[Endorsed]: Filed December 8, 1954. [172]

[Title of District Court and Cause.]

REPLY TO COUNTERCLAIM

Plaintiff, United States of America, replies to the matters alleged by way of counterclaim commencing at line 17 of page 3 of the pleading entitled "counterclaim," filed September 15, 1954, and served October 20, 1954, by the defendants George C. Finn and Charles C. Finn. This reply is not directed to matters alleged by way of affirmative defense at line 24 of page 1, through line 15 of page 3, of said pleading.

I.

Answering paragraph I, commencing at line 19, of page 3, of the Counterclaim, plaintiff admits that it is in possession of the property described in plaintiff's Amended Complaint, which property is more particularly identified as a C-46A Curtiss Commando airplane, United States Army Serial No. 42-3645, Manufacturer's Serial No. 1-232, Civil Aeronautics Administration Registration No. 111H. Plaintiff further admits that it claims title to the said property, and that it also claims that there has been a breach of a contract [173] between plaintiff and the defendant Vineland Elementary School District, which contract is more particularly identified in this cause as Plaintiff's Exhibit 1, Agreement, dated June 25, 1946, and that said breach of contract has been induced by the defendants George C. Finn and Charles C. Finn. Further answering said paragraph I, plaintiff denies each and every

allegation contained therein except insofar as said allegations have been expressly admitted above.

II.

Answering paragraphs II, III, IV, V, VI, and VII, commencing at line 25, of page 3, of the Counterclaim, plaintiff denies each and every allegation contained therein. Further answering said paragraphs, V, VI, and VII, plaintiff denies that the defendants George C. Finn and Charles C. Finn, or either of them, has been damaged in the sum of \$8,000 per month, or in the sum of \$15,000, or in the sum of \$12,000, or in any sum whatsoever, or at all.

Wherefore, Plaintiff prays that the defendants, George C. Finn and Charles C. Finn, take nothing by way of the Counterclaim on file herein.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ LOUIS LEE ABBOTT,
Assistant United States Attorney; Attorneys for
Plaintiff, United States of America.

[Endorsed]: Filed December 16, 1954. [174]

[Title of District Court and Cause.]

NOTICE OF MOTION TO APPLY PROPERTY
OF JUDGMENT DEBTORS TOWARD
SATISFACTION OF JUDGMENT

To the Appearing Parties in the Above-Entitled
Action:

You and each of you will please take notice that on Monday, January 10, 1955, at the hour of 10 o'clock a.m. or as soon thereafter as counsel can be heard in Court Room No. 2, Federal Building, Los Angeles, California, Defendant International Airports, Inc., will move the Court for its Order directing that certain Curtiss C-46A aircraft, Registration No. N-111H, Serial No. 42-6345, the aircraft in suit herein, which this Court heretofore has ordered delivered into the possession of Defendants Charles C. and George C. Finn, be delivered instead into the possession of International Airports, Inc., and applied toward the satisfaction of the judgment of said defendant against [176] Defendants Finn in the Superior Court of the State of California in and for the County of Los Angeles.

Said motion will be made on the ground that a writ of possession against said property has issued out of said Superior Court, and is unsatisfied, in that the aircraft in suit is now in the custody of this United States District Court, by its Marshal or his keeper, awaiting disposition pursuant to judgment heretofore ordered.

Said motion will be based upon this notice, the affidavit of A. J. Blackman served herewith, a certified copy of said writ of possession issued by said Superior Court, the statement of reasons and memorandum of points and authorities filed herewith, together with all of the evidence taken at the trial of the instant cause and papers filed herein.

Dated: January 4, 1955.

/s/ A. J. BLACKMAN

Attorney for defendant,
International Airports, Inc.

Statement of Reasons and Points and Authorities

For brevity, Defendant International Airports, Inc., incorporates by reference its Statement of Reasons and Points and Authorities in support of its Motion to Amend Memorandum of Decision as to Place of Delivery of Airplane.

Additional thereto, said defendant offers excerpts from California Code of Civil Procedure as [177] follows:

Sec. 715: "After the issuing of an execution against property, and upon proof, by affidavit of a party or otherwise, to the satisfaction of a judge of the court, that any judgment debtor has property which he unjustly refuses to apply toward the satisfaction of the judgment, such judge may, by an

order, require the judgment debtor to appear, at a specified time and place, before such judge or a referee appointed by him, to answer concerning the same; and such proceedings may thereupon be had for the application of the property of the judgment debtor toward the satisfaction of the judgment as are provided upon the return of an execution * * *"

Sec. 716: "After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff, constable, or marshal having such execution the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and such officer's receipt is a sufficient discharge for the amount so paid."

Sec. 719: "The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment: but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment debtor or denies the debt."

This record shows that as between Defendants Finn and Defendant, International Airports, Inc., the latter has the superior right to possession of the aircraft in suit. Although defendants Finn have appealed to the California District Court [178]

of Appeal from the Superior Court judgment against them, they have posted no bond staying proceedings.

In the interest of comity, we submit that this Court should honor the writ of possession of said Superior Court by directing its Marshal or any custodian keeping said aircraft for said Marshal, to deliver said aircraft to International Airports, Inc., alone.

/s/ A. J. BLACKMAN,

Attorney for Defendant,
International Airports, Inc.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 4, 1955. [179]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on regularly for trial on Wednesday, October 27, 1954, before the Honorable William C. Mathes, Judge presiding, sitting with an advisory jury, in Courtroom No. 2 of the above-entitled court.

Appearances were as follows: Laughlin E. Waters, United States Attorney; Max F. Deutz, Louis Lee Abbott, and Leila F. Bulgrin, Assistants

United States Attorney, by Louis Lee Abbott, Esq., appeared as attorneys for plaintiff; Defendants George C. Finn and Charles C. Finn appeared in propria persona; A. J. Blackman, Esq., appeared as attorney for Defendant, International Airports, Inc.; Roy Gargano, County Counsel of Kern County, and Kit L. Nelson, Assistant County Counsel of Kern County, by Kit L. Nelson, Esq., appeared as attorneys for Vineland Elementary School District of Kern County and Peter A. Bancroft; and Wallace and [182] Cashin, Esqs., appeared for Defendant Seaboard Surety Company.

Defendant Seaboard Surety Company filed a disclaimer of any interest herein and, by stipulation, was dismissed without costs. Certain stipulations of fact having been entered into by all parties, and oral and documentary evidence having been introduced on behalf of all remaining parties, and arguments having been made both orally and in writing, the Court, having considered the same, now makes the following:

Finding of Fact

1. On or about July 25, 1946, plaintiff, by its agency, the War Assets Administration, sold and transferred possession of a certain Curtiss Commando C-46A aircraft, bearing United States Army Serial No. 42-3645 (hereinafter sometimes referred to as "said aircraft") to the Defendant Vineland Elementary School District of Kern County, California (hereinafter sometimes referred to as "Defendant

Vineland"). Such sale and transfer was made pursuant to the Surplus Property Act of 1944, (58 Stat. 766, 50 U.S.C. App., Sec. 1611 et seq.) and regulation 4 thereunder (11 F.R. 5868, Tit. 32 C.F.R. 1946 Supp. Sec. 8304, 1 et seq.) by such sale, plaintiff intended to and did transfer full title to said aircraft to Defendant Vineland. The then fair market value of said aircraft was the sum of \$5,000.

2. Defendant Vineland used said aircraft for educational purposes as a classroom at one of its elementary schools for over four years thereafter.

3. In January of 1951, Defendant Vineland regularly published an invitation for bids upon said aircraft, and on February 28, 1951, did sell and did transfer construction possession of said aircraft to Defendant Charles C. Finn and Defendant George C. Finn (hereinafter sometimes referred to as "Defendants Finn"), who were the only bidders therefor, under a written agreement bearing said date (Vineland's Exhibit B). The fair market value [183] of the aircraft on said date was in the sum of \$20,000.

4. On April 14, 1951, Defendant Bancroft delivered to Defendants Finn a Civil Aeronautics Administration form bill of sale (Form ACA-500) to said aircraft (Defendants Finn's Exhibit K-4 in evidence). The fair market value of the aircraft on said last mentioned date was in the sum of \$25,000.

5. That the board of Trustees of the Vineland School District intended to and did approve the acts of Peter Bancroft in connection with transactions concerning the aircraft in suit; and that said Board of Trustees intended and did regularly act as a Board of Trustees in authorizing the execution of an agreement between defendants Finn and Vineland Elementary School District dated February 28, 1951 (Vineland's Exhibit B).

6. The intention of Defendants Finn in so Purchasing said aircraft was to use it for commercial flight purposes and establish themselves as proprietors in a new independent enterprise in the field of air transportation.

7. On April 16, 1951, the Civil Aeronautics Administration issued to Defendants Finn a certificate of registration for said aircraft, and assigned to it No. N 111H. Officials of the Federal Security Agency authorized to do so did not waive or release the claim of plaintiff under War Assets Administration Form 65 agreement executed by defendant Vineland on or before June 26, 1946 (Plaintiff's Exhibit 1).

8. Said aircraft required substantial repairs before it could be considered airworthy. On August 31, 1951, Defendants Finn as mortgagor executed a chattel mortgage on said aircraft to Defendant, International Airports, Inc., a California corporation (hereinafter sometimes referred to as "Defendant

International’’), as security for a loan of \$15,000. As part of the same transaction, said parties executed a written lease and a written agreement for the repair and improvement of said aircraft. Said chattel mortgage [184] was recorded by the Civil Aeronautics Administration on November 14, 1951.

9. Thereafter, Defendants Finn transferred possession of said aircraft by flight to Defendant International at its premises at Lockheed Air Terminal, Burbank, California, on or about October 26, 1951. Said aircraft remained in Defendant International’s possession until May 25, 1952, during which time Defendant International bestowed labor and materials for its repair and improvement, of the reasonable value of \$10,200 for which said Defendant International claimed an aircraft lien under the provisions of California Code of Civil Procedure Section 1208.61 et seq. Defendant International contends that it has at no time released said claimed lien or consented to possession in the Defendants Finn after May 25, 1952.

10. Said loan was made and said labor and materials were bestowed by Defendant International in the ordinary course of its business believing in good faith that Defendants Finn were the true and lawful owners of the aircraft.

11. Although transfer of constructive possession occurred on February 28, 1951, as aforesaid, Defendant Vineland actually released said air-

craft on October 23, 1951, to Defendants Finn for the purpose of having work done on said aircraft which could not otherwise be completed at the Vineland School. In so doing, Defendant Vineland acted in good faith.

12. At no time did Defendants Finn or Defendant Peter A. Bancroft, intentionally or otherwise, induce Defendant Vineland to breach any agreement between said Defendant Vineland and plaintiff; nor did Defendant Vineland ever breach any such agreement.

13. On May 28, 1952, Defendant International commenced action No. 599895 against Defendants Finn in the Superior Court of the State of California in and for the County of Los Angeles for claim and delivery of said aircraft; on June 9, 1952, [185] Defendant International commenced action No. 600291 against Defendants Finn in said Superior Court for foreclosure of its said chattel mortgage. Pursuant to legal process obtained in said action under Part 2, Title 7, Chapter 2 of the California Code of Civil Procedure, the Sheriff of Los Angeles County took possession of said aircraft. Defendants Finn failed to give a written undertaking to retain said aircraft, as provided in Section 514, California Code of Civil Procedure. On June 13, 1952, said Sheriff delivered to International his order under Section 514, California Code of Civil Procedure, releasing said aircraft to International at Lockheed Air Terminal in Bur-

bank. Immediately thereafter the Finns took possession of said aircraft and excluded International therefrom. Said actions were there consolidated for trial, and a judgment thereon entered in favor of Defendant International providing that International have and recover possession of said aircraft, and other relief (International's Exhibit D). An appeal from this judgment is now pending. There has been no stay of execution of the said judgment.

14. Plaintiff does not have the right to possession of said aircraft, and did not have such right either on July 3, 1952 when the instant suit was commenced or at any time thereafter.

15. As between plaintiff and all defendants, the defendants Finn had the right to possession of the aircraft in suit on July 3, 1952, and at all times thereafter; provided that no adjudication of the right to possession as between defendant International and defendants Finn is here made or intended.

16. The United States Marshal for the Southern District of California, acting pursuant to claim and delivery process issued on behalf of plaintiff, took possession of the aircraft in suit at Bakersfield, California, on September 18, 1952, and retained said possession until October 13, 1952, when he delivered said aircraft to plaintiff. Plaintiff retained possession thereof until [186] January 18, 1953, at which time Defendants Finn, without permission of the Government, took pos-

session of said aircraft and retained possession thereof until February 1, 1953, when plaintiff again took possession of said aircraft at Scotty's airstrip in the State of Nevada.

17. The fair market value of said aircraft on July 3, 1952, and on September 18, 1952, was in the sum of \$50,000; the fair market value of the use of said aircraft in the condition in which it was in on September 18, 1952, and at all times thereafter was and now is in the sum of \$15 per day.

18. As between plaintiff and each defendant, and subject to the provisions of paragraphs 19 and 20 below, these findings of fact shall be a final and complete adjudication of all existing rights or claims in or to the aircraft in suit and all existing claims arising out of the detention of said aircraft by any party hereto.

19. Each and all of the foregoing findings of fact are without prejudice to any claims of defendant International as against Defendants Finn, which may now exist or be hereafter adjudicated in the Superior Court of the State of California in and for the County of Los Angeles, which claims are not here adjudicated.

20. Each and all of the foregoing findings of fact are without prejudice to any other claims, list expressly adjudicated herein, of Defendant Vineland or Defendant Peter A. Bancroft as against Defendants Finn, which may now exist or be hereafter adjudicated.

21. The unanimous findings of the advisory jury are adopted as findings herein. To the extent not inconsistent herewith, the Court's Memorandum of Decision filed December 8, 1954, is hereby incorporated herein by reference. [187]

Conclusions of Law

From the foregoing facts, the Court makes the following conclusions of law:

I.

A declaratory judgment should issue, adjudging as follows:

(1) In July of 1946 the War Assets administration transferred to Vineland Elementary School District full ownership, both legal and equitable, in and to the airplane in suit, more particularly described as that certain Curtiss C-46A aircraft United States Army serial number 42-3645, Civil Aeronautics Administration registration number N-111H.

(2) On February 28, 1951, Defendant Vineland Elementary School District sold, transferred and delivered to Defendants George C. Finn and Charles C. Finn all of its right, title and interest in and to said aircraft in suit.

(3) Plaintiff has neither right to possession, nor valid claim of title to the aircraft in suit.

(4) The provisions concerning certain use and sale of aeronautical property contained in the form

65 agreement (Plaintiff's Exhibit 1) are contradictory to those contained in Regulation 4, Sec. 8304.11 (b), 32 C.F.R. 1946 Supp.), and invalid.

(5) The provisions concerning certain use of aeronautical property contained in Regulation 4 (subsection (2) of Sec. 8304.11 (b), 32 C.F.R. 1946 Supp.) and in the Form 65 agreement (Plaintiff's Exhibit 1) is contrary to the provisions and objectives of the Surplus Property Act of 1944 (58 Stat. 766, 50 U.S.C. App. Sec 1611), and invalid.

II.

Defendants are entitled to judgment that plaintiff take nothing by its amended complaint, and that said complaint be dismissed upon the merits. [188]

III.

Defendants Finn are entitled to judgment on their counter claim against plaintiff that they, their agents, successors, or assigns, recover from plaintiff at Scotty's Airstrip in the State of Nevada the possession of that certain property described as follows: One Curtiss C-46A aircraft, United States Army Serial No. 42-3645, Civil Aeronautics Administration Registration No. N-111H, in the same order and condition as the same was when last seized by the plaintiff on February 1, 1953, ordinary wear and tear excepted; or, in the alternative, should plaintiff so elect, that said Defendants Finn recover from plaintiff the sum of \$50,000; that in either event, said Defendants Finn recover from plaintiff as

and for loss of use of said aircraft the sum of \$12,300 plus the sum of \$15 per day for each and every day such delivery of possession or alternative payment herein provided is delayed after December 31, 1954.

IV.

That as between Defendants Finn and Defendant International only, such judgment should be without prejudice to any claims of Defendant International which may now exist or be hereafter adjudicated in the Superior Court of the State of California in and for the County of Los Angeles.

V.

Except as otherwise provided herein, that as between Defendants Finn and Defendants Vineland School District and Peter A. Bancroft, such judgment should be without prejudice to any other claims of defendants Vineland and Peter A. Bancroft against Defendants Finn which may now exist or be hereafter adjudicated.

VI.

Let judgment be entered accordingly.

Dated: February 7, 1955.

/s/ WM. C. MATHES,

United States District Judge.

Receipt of copy acknowledged.

Lodged February 2, 1955.

[Endorsed]: Filed February 7, 1955. [189]

United States District Court for the Southern
District of California, Central Division

No. 14309-WM-Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE C. FINN, CHARLES C. FINN, IN-
TERNATIONAL AIRPORTS, INC.; PETER
A. BANCROFT, VINELAND ELEMEN-
TARY SCHOOL DISTRICT OF KERN
COUNTY and SEABOARD SURETY COM-
PANY, a Corporation,

Defendants.

JUDGMENT

(For Defendants, and for Defendants Finn on
Counter Claim)

This cause having come on for trial on October 27, 1954, and the Court having taken such evidence as was offered by all parties as to the issues in the case,

It Is Ordered, Adjudged and Decreed that:

(1) In July of 1946 the War Assets Administration transferred to Vineland Elementary School District full ownership, both legal and equitable, in and to the airplane in suit, more particularly described as that certain Curtiss C-46A aircraft, United States Army Serial No. 42-3645, Civil Aeronautics Administration Registration No. N-111H.

(2) On February 28, 1951, Defendant Vineland Elementary School District, sold, transferred, and delivered to Defendants George C. Finn and Charles C. Finn all of its right, title and interest in and to said aircraft in suit. [191]

(3) Plaintiff has neither right to possession, nor valid claim of title to the aircraft in suit.

(4) The provisions concerning certain use and sale of aeronautical property contained in the Form 65 agreement (Plaintiff's Exhibit 1) are contradictory to those contained in Regulation 4, Sec. 8304.11(b). 32 C.F.R. 1946 Supp., and invalid.

(5) The provisions concerning certain use of aeronautical property contained in Regulation 4 (subsection (2) of Sec. 8304.11(b), 32 C.F.R. 1946 Supp.) and in the Form 65 agreement (Plaintiff's Exhibit 1) are contrary to the provisions and objectives of the Surplus Property Act of 1944 (58 Stat. 766, 50 U.S.C. App. Sec. 1611), and invalid.

It Is Further Ordered, Adjudged and Decreed that plaintiff take nothing by its amended complaint herein, and that said complaint is dismissed upon the merits.

It Is Further Ordered, Adjudged and Decreed that Defendants George C. Finn and Charles C. Finn, their agents, successors, or assigns, recover from plaintiff at Scotty's Airstrip in the State of Nevada the possession of that certain property described as follows: One Curtiss C-46A aircraft, United States Army Serial No. 42-3645, Civil Aero-

navitics Administration Registration No. N-111H, in the same order and condition as the same was when last seized by plaintiff on February 1, 1953, ordinary wear and tear excepted; or, in the alternative, should plaintiff so elect, that said defendants Finn recover from plaintiff the sum of \$50,000; that in either event, said defendants Finn recover from plaintiff as and for loss of use of said aircraft the sum of \$12,300 plus the sum of \$15 per day for each and every day such delivery of possession or alternative payment herein provided is delayed after December 31, 1954.

It Is Further Ordered, Adjudged and Decreed that as between Defendants George C. Finn and Charles C. Finn and Defendant [192] International Airports, Inc., only, this judgment is without prejudice to any claims of Defendant International Airports, Inc., which now may exist or be hereafter adjudicated in the Superior Court of the State of California in and for the County of Los Angeles.

It Is Further Ordered, Adjudged and Decreed that except as otherwise provided herein, that as between Defendants George C. Finn and Charles C. Finn and Defendant Vineland School District and Defendant Peter A. Bancroft only, this judgment is without prejudice to any other claims of Defendants Vineland and Bancroft which may now exist or may be hereafter adjudicated.

It Is Further Ordered, Adjudged and Decreed that as between plaintiff and each defendant, and

subject to the provisions of the two paragraphs of this judgment last preceding, this judgment shall be a final and complete adjudication of all existing rights or claims in or to the aircraft in suit and all existing claims arising out of the detention of said aircraft by any party hereto.

Dated: February 7, 1955.

/s/ WM. C. MATHES,

United States District Judge.

Receipt of copy acknowledged.

Lodged February 2, 1955.

[Endorsed]: Filed February 7, 1955.

Judgment docketed and entered February 8, 1955. [193]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL; AND MOTION
TO AMEND FINDINGS OF FACT, CON-
CLUSIONS OF LAW, AND JUDGMENT

Plaintiff, United States of America, pursuant to Rules 52 and 59, Federal Rules of Civil Procedure, without abandoning or waiving any other objections to the Findings of Fact, Conclusions of Law, and Judgment, asserted by it, moves the Court as follows:

I.

A. For an order amending the Findings of Fact

filed February 7, 1955, by striking from the finding of fact numbered 15 the words "defendants Finn" at page 5, line 23, and inserting in place thereof the words "defendant International Airports, Inc."

B. For an order amending conclusion of law III by:

1. Striking therefrom the words:

"that in either event, said Defendants Finn recover from plaintiff as and for loss of use of said aircraft the sum of \$12,300 plus the sum of \$15 per day for each and every day such delivery of possession or alternative payment herein provided is delayed after December 31, 1954."

at page 8, lines 12 through 16; or, in the alternative:

2. Striking therefrom the words and figures:

"12,300 plus the sum of \$15 per day for each and every day such delivery of [197] possession or alternative payment herein provided is delayed after December 31, 1954."

at page 8, lines 13 through 16, and inserting in place thereof the figure "\$12,870."

C. For an order amending the Judgment entered February 8, 1955, by:

1. Striking therefrom the words:

"that in either event, said defendants Finn recover from plaintiff as and for loss of use of said aircraft the sum of \$12,300 plus the sum of \$15 per day for each and every day

such delivery of possession or alternative payment herein provided is delayed after December 31, 1954.”

at page 2, lines 25 through 30; or, in the alternative:

2. Striking therefrom the words and figures:
“12,300 plus the sum of \$15 per day for each and every day such delivery of possession or alternative payment herein provided is delayed after December 31, 1954.”

at page 2, lines 27 through 30, and inserting in place thereof the figure \$12,870.”

Should the Court fail to grant all of the relief sought in paragraphs A, B-1, and C-1 above, then plaintiff further moves for an order opening the Judgment and granting a new trial with respect to the following issues:

(A) Which of the parties hereto has and will have the right to possession of the aircraft in suit from September 18, 1952, to the date upon which the accrual of damages recovered by the defendants [198] Finn for loss of use of said aircraft, pursuant to conclusion of law III, and Judgment, page 2, lines 25 through 30, shall terminate.

(B) Which of the parties hereto, if any, has or will have the right to make beneficial use of the aircraft in suit from September 18, 1952, to the date upon which the accrual of damages recovered by the defendants Finn for loss of use of said aircraft,

pursuant to conclusion of law III, and Judgment, page 2, lines 25 through 30, shall terminate.

Said Motions are based upon the Writ of Possession issued by the Superior Court of the State of California, in and for the County of Los Angeles, in *International Airports, Inc., v. Charles C. Finn, et al.*, Nos. 599,895 and 600,291 (consolidated cases), dated January 3, 1955, and made a part of the record herein as an exhibit to Notice of Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment, filed by defendant International Airports, Inc., on January 4, 1955; Order of this Court made February 7, 1955, granting defendant International's Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment; certified copy of docket in *International Airports, Inc., v. George C. Finn, et al.*, Civil No. 20076, California District Court of Appeal, Second District, Division 1, attached hereto as Exhibit A; the Points and Authorities filed herewith; and upon all of the records, pleadings, evidence, briefs, papers and proceedings in this cause; and upon the following grounds:

(a) As between defendant International Airports, Inc., and defendants George C. Finn and Charles C. Finn, defendant International Airports, Inc., has had the right to possession of the aircraft in suit at all times from September 18, 1952, to the date upon which the accrual of damages recovered by the defendants Finn for loss of use of said aircraft will terminate, by virtue of: [199]

(i) An aircraft lien, possessory in nature, created pursuant to California Code of Civil Procedure, Section 1208.61, et seq., for work and materials bestowed in the improvement of said aircraft prior to May 25, 1952 (finding of fact numbered 9);

(ii) A Chattel Mortgage between defendants George C. Finn and Charles C. Finn, as mortgagor, and defendant International Airports, Inc., as mortgagee, dated August 31, 1951 (finding of fact numbered 8; Exhibit B), which provides, in part, that upon default the mortgagee may at its option enter upon the premises where the said aircraft may be and take possession thereof;

(iii) Claim and delivery process obtained with respect to International Airports, Inc., v. Charles C. Finn, et al., No. 599,895, in the Superior Court of the State of California in and for the County of Los Angeles, which process was executed by the Sheriff of Los Angeles County, California, pursuant to Part II, Title 7, Chapter 2, of the California Code of Civil Procedure, said Sheriff making delivery of said aircraft to defendant International Airports, Inc., on June 13, 1952, pursuant to California Code of Civil Procedure, Section 514 (finding of fact numbered 13; defendant International's Exhibit O);

(iv) Judgment in International Airports, Inc., v. Charles C. Finn, et al., Nos. 599,895 and

600,291, in the Superior Court of the State of California in and for the County of Los Angeles, entered March 3, 1953, which provides, in part, [200] that International Airports, Inc., have and recover from defendants Charles C. Finn and George C. Finn the possession of the aircraft in suit. Execution of the said Judgment has not been stayed. (Finding of fact numbered 13; defendant International's Exhibit D.) An appeal from said Judgment is now pending. Oral argument has been waived and the cause will stand submitted on February 21, 1955 (Exhibit A, attached hereto);

(v) Writ of Possession issued by the Superior Court of the State of California, in and for the County of Los Angeles, in International Airports, Inc., v. Charles C. Finn, et al., Nos. 599,895 and 600,291 (consolidated cases), dated January 3, 1955, and made a part of the record herein as an exhibit to Notice of Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment, filed by defendant International Airports, Inc., on January 4, 1955;

(vi) Order of this Court made February 7, 1955, granting defendant International's Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment.

(b) That the proceedings, process and Judgment of the Superior Court of the State of California, in and for the County of Los Angeles, more particu-

larly described in subparagraph (a) above, although subject in part to appeal in the courts of said State, are not subject to collateral attack in this cause.

(c) That this Court has in fact given effect to said process, proceedings and Judgment in making its Order [201] of February 7, 1955, granting defendant International's Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment, which Order is inconsistent with the finding that the defendants Finn are entitled to the possession of the aircraft in suit, and with the award of damages for the loss of use thereof. This Court also gave effect to the Superior Court Judgment in requiring that the Government stipulate to the reasonable value of work and materials bestowed upon the aircraft in suit by defendant International Airports, Inc., as that value had been fixed in said Judgment, or face an indefinite postponement of the trial of the cause. (Tr. Proceedings of Tuesday, October 12, 1954, page 13, line 6, through page 18, line 21.)

(d) In any event, the decision of the District Court of Appeal, with reference to the appeal from the Judgment of the above-described Superior Court action, should, in the ordinary course of events, be rendered in the near future (see Exhibit A attached hereto). However, plaintiff respectfully urges that this Honorable Court can and should grant the relief sought at paragraphs A, B-1 and C-1 above without awaiting said decision.

(e) The evidence is insufficient to justify and the weight of the evidence is against finding of fact numbered 15 and the decision of the Court with respect to the award of damages to the defendants Finn for loss of use of the aircraft in suit for the reasons stated in subparagraphs (a), (b), (c) and (d) above.

(f) Damages for wrongful detention cannot be awarded for a period after the date of Judgment.

(g) The decision and Judgment awarding damages to the defendants Finn for loss of use of the aircraft in suit [202] are against law for the reasons stated in subparagraphs (a), (b), (c), (d), (e) and (f) above.

(h) There is newly discovered evidence, material to plaintiff's case, to wit:

(i) The Writ of Possession issued by the Superior Court of the State of California, in and for the County of Los Angeles, in *International Airports, Inc., v. Charles C. Finn, et al.*, Nos. 599,895 and 600,291 (consolidated cases), dated January 3, 1955, and made a part of the record herein as an exhibit to Notice of Motion to Apply Property of Judgment Debtors Toward Satisfaction of Judgment, filed by defendant International Airports, Inc., on January 4, 1955;

(ii) Order of this Court made February 7, 1955, granting defendant International's Mo-

tion to Apply Property of Judgment Debtors
Toward Satisfaction of Judgment;

which newly discovered evidence plaintiff could not with reasonable diligence have discovered and produced at the time of trial since said Writ had not been issued and said Order had not been made at the time of trial.

II.

A. For an order amending the Findings of Fact filed February 7, 1955, by:

1. Striking from finding of fact numbered 17 the words "on July 3, 1952, and" at page 6, lines 6 and 7;

2. Striking from finding of fact numbered 17 the figure "\$50,000" at page 6, line 7, and by [203] inserting in place of said figure "\$30,000."

B. For an order amending Conclusion of Law III by striking therefrom the figure "\$50,000" at page 8, line 11, and inserting in place thereof the figure "\$30,000."

C. For an order amending the Judgment entered February 8, 1955, by striking therefrom the figure "\$50,000" at page 2, line 25, and inserting in place thereof the figure "\$30,000."

Should the Court fail to grant all of the relief sought in paragraphs A, B and C above, then plaintiff further moves for an order opening the Judgment, entered February 8, 1955, setting aside the verdict rendered by the advisory jury in answer to

Interrogatory 20, and granting a new trial with respect to the following issues:

(A) What was the fair market value in cash of the aircraft in suit on July 3, 1952.

(B) What was the fair market value in cash of the aircraft in suit on September 18, 1952.

Said Motions are based upon the records, pleadings, briefs, exhibits and papers on file herein, the Minutes of the Court, the official court reporter's transcript of the testimony, and the notes and memoranda kept by the trial Judge; and are made upon the following grounds:

(a) The evidence is insufficient to justify and the weight of the evidence is against the verdict rendered by the advisory jury in answer to Interrogatory 20 in that the only competent evidence presented to the jury relative to the fair market value for cash of the aircraft in suit on July 3, 1952, is the testimony of Douglas Duly, who stated that said fair market value was \$30,000 (Tr. October 27, 1954, page 114, lines 10 through 15); [204]

(b) The evidence is insufficient to justify and the weight of the evidence is against the finding of fair market value of the aircraft in suit on September 18, 1952, which finding is contained in finding of fact numbered 17 in that the only witnesses who testified relative to said issue fixed said fair market value as follows:

Name of Witness: Douglas Duly.

Value: \$30,000.

(Reference to the Transcript: Tr. November 5, 1954, page 61, lines 8-21.)

Name of Witness: George E. Batchelor.

Value: \$33,000.

(Reference to the Transcript: Tr. November 5, 1954, page 43, line 8, through page 45, line 4.)

A motion picture made in 1949 and an equivocal and repudiated offer made in August of 1951 are not evidence sufficient to support a finding outside the range of fair market value fixed by said testimony. The advisory jury could hardly have considered either the picture or the equivocal offer in making a finding as to fair market value since it placed the fair market value for the period February 28, 1951, through October 26, 1951, at from \$20,000 to \$25,000 (Interrogatories 17, 18 and 19). The allegations in a pleading filed by a party which has not had possession of the personal property being valued during the six-year period preceding the filing of that pleading is not evidence which should permit a finding of fair market value outside of the range of values fixed by the sworn and uncontradicted testimony of qualified experts called by both parties.

(c) The fair market value of the aircraft in suit as found by the advisory jury in response to Interrogatory 20, Special Verdict, appears to have been given under the [205] influence of passion or prejudice.

Respectfully submitted,

LAUGHLIN E. WATERS,

United States Attorney;

MAX F. DEUTZ,

Assistant United States Attorney, Chief of Civil
Division;

/s/ LOUIS LEE ABBOTT,

Assistant United States Attorney, Attorneys for
Plaintiff. [206]

EXHIBIT A

Second District, Civil No. 20076

Los Angeles County

599895-600291

INTERNATIONAL AIRPORTS, INC.,

Pltf. & Respt.,

vs.

CHARLES C. FINN, et al.,

Defts. & Appls.

Charles J. Griffin, Judge.

A. J. Blackman,

315 W. 9th St.,

Los Angeles 15, Calif.,

For International Airports, Inc.

Charles C. Finn,

7617 Lexington Ave.,

Hollywood 25, Calif..

In Propria Persona.

Dec. 3, 1953—Filed notice of motion to dismiss appeals 12/22.

Dec. 22, 1953—Aplts. relieved from default, 48 hours to pay fee for clerk's trans., 10 days to file record on appeal.

Dec. 23, 1953—Rec'd receipt for fees of County Clerk. Assigned to Division One.

Dec. 28, 1953—Filed cert. of county clerk (re rep. Trans.) & receipt of reporter for fees.

Jan. 5, 1954—Filed record on Appeal C 1, 2 appeals from jdmt. R 3

Jan. 25, 1954—Rec'd filing fee for second appeal.

May 24, 1954—Aplt. notified pursuant to Rule 17a.

Sept. 28, 1954—Filed appellants opening brief.

Dec. 15, 1954—Filed respondents brief.

Dec. 29, 1954—Ordered on calendar Jan. 25, 1955.

Jan. 13, 1955—Exhibits received from Superior Court.

Jan. 25, 1955—Argument waived, aplts. 10 days to file brief, then aplts. 2/21/55 submit.

I, J. E. Brown, Clerk of the District Court of Appeals in and for the Second Appellate District of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of page 20076 of Civil Register of Actions as shown by the records of my office.

Witness my hand and the Seal of the Court, this
15th day of February, A.D. 1955.

[Seal] J. E. BROWN,
Clerk.

By /s/ J. T. ALLEY,
Deputy Clerk.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 18, 1955. [212]

United States District Court for the Southern Dis-
trict of California, Central Division
No. 14309 WM Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE C. FINN, CHARLES C. FINN, IN-
TERNATIONAL AIRPORTS, INC., PETER
A. BANCROFT, VINELAND ELEMEN-
TARY SCHOOL DISTRICT OF KERN
COUNTY, and SEABOARD SURETY COM-
PANY, a Corporation,

Defendants.

ORDER GRANTING MOTION OF DEFEND-
ANT INTERNATIONAL AIRPORTS, INC.,
TO APPLY PROPERTY OF JUDGMENT
DEBTORS TOWARD SATISFACTION OF
JUDGMENT

The motion of the Defendant, International Air-
ports, Inc., to apply property of judgment debtors

toward satisfaction of judgment having come on for hearing on February 7, 1955, at 2:00 o'clock in the afternoon, before the Honorable William C. Mathes; the Defendant, International Airports, Inc., appearing by its counsel, A. J. Blackman; the Defendants, Vineland Elementary School District of Kern County and Peter A. Bancroft appearing by their counsel, Kit L. Nelson; the Defendants George C. Finn and Charles C. Finn appearing in propria persona; and Laughlin E. Waters, United States Attorney, by Louis Lee Abbott, Assistant United States Attorney, appearing on behalf of plaintiff; and the Court being fully advised in the premises; [215]

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the motion of the Defendant, International Airports, Inc., to apply property of Judgment debtors toward satisfaction of judgment be and the same is hereby granted, as follows: That if plaintiff should elect to deliver to Defendants George C. Finn and Charles C. Finn, their agents, successors or assigns, the possession of that certain Curtiss C-46A aircraft, United States Army Serial No. 42-3645, Civil Aeronautics Administration Registration No. N-111H, as provided in the judgment docketed herein, said aircraft shall be delivered instead to Defendant, International Airports, Inc., and in the same order and condition specified in said judgment, and at the same place as is specified therein, or at such other place as

may be agreed upon in writing between plaintiff and said defendant;

It Is Further Ordered, Adjudged and Decreed that upon such delivery, Defendant, International Airports, Inc., with reasonable dispatch shall cause said aircraft to be flown or otherwise transported to Los Angeles County and there delivered into the custody of the Sheriff of said county for disposition pursuant to the writ of possession issued, or any alias writ of possession which may hereafter be issued, by the Superior Court of the State of California in and for the County of Los Angeles, in the consolidated cases entitled "International Airports, Inc., plaintiff, vs. Charles C. Finn and George C. Finn. defendants," No. 599,895 and No. 600,291 in the files of said Court;

It Is Further Ordered that subject to further order of this Court, Defendants Charles C. Finn and George C. Finn, their agents, employees, representatives, and any and everyone acting for or on behalf of said Defendants Charles C. Finn and George C. Finn, or either, be and they hereby are enjoined and restrained from moving, flying, or doing anything with or to the aircraft [216] hereinabove specifically described, or from interfering, directly or indirectly, with the possession of said aircraft by plaintiff, or Defendant, International Airports, Inc., or the Sheriff of Los Angeles County or the custodian of any of them, until permitted so to do by further order of Court, State or Federal.

Dated: February 28, 1955.

/s/ WM. C. MATHES,

Judge of United States District Court.

Affidavit of service by mail attached.

Lodged February 18, 1955.

[Endorsed]: Filed February 28, 1955.

Judgment docketed and entered March 1, [217] 1955.

[Title of District Court and Cause.]

ORDER DENYING MOTIONS OF PLAINTIFF FOR NEW TRIAL AND TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Plaintiff's Motion for New Trial and Motion to Amend Findings of Fact, Conclusions of Law, and Judgment, having come on for hearing on March 21, 1955, at 10:00 o'clock a.m., before the Honorable William C. Mathes; Laughlin E. Waters, United States Attorney, by Louis Lee Abbott, Assistant United States Attorney, appearing on behalf of plaintiff; Defendant International Airports, Inc., appearing by its counsel, A. J. Blackman; Defendant Vineland Elementary School District of Kern County and Defendant Peter A. Baneroft appearing by their counsel, Roy Gargano,

County Counsel of Kern County, by Dennis McCarthy; Defendant Charles C. Finn appearing in propria persona, and Defendant George C. Finn being absent; and it appearing that proper notice of the time and place of hearing has been given, and the Court being fully advised in the premises;

Now Therefore, It Is Hereby Ordered, Adjudged and [220] Decreed that the plaintiff's Motion for New Trial be and the same is hereby denied;

It Is Further Ordered, Adjudged and Decreed that plaintiff's Motion to Amend Findings of Fact, Conclusions of Law, and Judgment be and the same is hereby denied.

Done in Open Court March 21, 1955.

/s/ WM. C. MATHES,

Judge of the United States
District Court.

Affidavit of service by mail attached.

[Endorsed]: Filed March 31, 1955. [221]

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER DENY-
ING MOTIONS OF PLAINTIFF FOR NEW
TRIAL AND TO AMEND FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals

to the United States Court of Appeals for the Ninth Circuit from the Order Denying Motions of Plaintiff for New Trial and to Amend Findings of Fact, Conclusions of Law, and Judgment, entered March 31, 1955.

Dated: April 12, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,
Assistant U. S. Attorney,
Chief of Civil Division;

/s/ LOUIS LEE ABBOTT,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed April 13, 1955. [224]

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM
FINAL JUDGMENT

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on February 8, 1955.

Dated: April 12, 1955.

LAUGHLIN E. WATERS,
United States Attorney;

MAX F. DEUTZ,

Assistant U. S. Attorney,
Chief of Civil Division;

/s/ LOUIS LEE ABBOTT,

Assistant U. S. Attorney,
Attorneys for Plaintiff.

Affidavit of mail attached.

[Endorsed]: Filed April 13, 1955. [225]

In the United States District Court, Southern
District of California, Central Division
No. 14309-HW Civil

Honorable Harry C. Westover, Judge Presiding.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE C. FINN, et al.,

Defendants.

REPORTERS TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiff:

HARRY D. STEWARD,

Assistant United States Attorney.

For the Defendant, International Airports,
Inc.:

NORMAN KULL, Esq.

For the Defendants, Vineland Elementary
School District and Peter A. Bancroft:

ROBERT WYCOFF, Esq.

For the Defendants George C. Finn and Charles
C. Finn:

In Propria Persona.

November 9, 1953—10:00 a.m.

The Clerk: No. 10, 14309, United States vs.
George C. Finn, et al., resetting.

Mr. Steward: The government is ready on that.

Mr. Kull: Ready for International Airports.

Mr. Wycoff: Ready for the Vineland School
District.

The Court: What have you decided to do about
filing a disqualification?

Mr. Finn: Your Honor, we have reached a de-
cision. We are unanimous. We have first a reason-
able request, which we consider reasonable. There
is a matter in the record which we don't understand
the importance of.

The Court: Now, Mr. Finn, I haven't got time
to discuss this question with you. We are here for
a question of setting. If you want to disqualify me,
tell me you are going to file an affidavit and I
will transfer this case out. Otherwise, I am going
to set it. I am not going to try to explain any
of the things that are in the record. You are here

to set the case or transfer it out. Which do you want us to do?

Mr. Finn: Under the circumstances, your Honor, if we can't have a clarification of the record, we will have to transfer it out.

The Court: All right. I will transfer this case to Judge Yankwich for further proceedings. [2*]

Judge Yankwich is here today, so you take the file over to him and he will dispose of this for you as promptly as he disposes of other matters. [3]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California this 11th day of May 1955.

/s/ S. J. TRAINOR,
Official Reporter. [4]

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Thursday, August 26, 1954.

Honorable William C. Mathes, Judge presiding. [5]

* * *

The Court: The United States of America is sovereign. It can only be sued, no matter what it does, it can only be sued by consent of the Congress. Now, just get that into your head. It can only be sued under those circumstances, and in those connections where Congress consents for it to be sued.

Mr. Charles C. Finn: I certainly take the Court's opinion on that, your Honor.

The Court: Now, the point Mr. Cohen made, it is a close legal question. He makes the point that where the Government subjects itself to the jurisdiction of the court and asserts [14] a claim that the person against whom the claim is asserted has a right to assert any pertinent counterclaim. Now, as I say, it is a question of law. That may be a close question in this case, as to how far it is applicable in view of the express provision of the Federal Torts Claims Act, withholding consent to be sued for certain torts such as false imprisonment, slander and the like. But Code Section 2406 of Title 28 of the United States Code makes provision for offsetting claims, not to recover an affirmative amount, but to offset against the Government claims certain amount—quite a different thing.

Here in this cross-complaint—in the first place, there is no such thing as a cross-complaint in Federal law; either a counterclaim or cross-claim. This is a counterclaim which you filed here, seeking

some two million dollars damages. Now the Government's suit against you prays for considerably less money.

Now, assuming that properly pleaded, the court would have jurisdiction of the counterclaim, the court would have no jurisdiction to render affirmative judgment against the United States, but only jurisdiction to offset against the Government's claim any counterclaim that you might be able to establish.

Mr. Charles C. Finn: I see, your Honor.

The Court: Now, If you want to read—I trust Mr. Cohen will want to if he hasn't already—Section 2406 of [15] Title 28 of the United States Code. That is Section 2406 of Title 28, Rule 13(d)—subsection (d) of rule 13 of the Federal Rules of Civil Procedure. And *United States vs. Shaw*, 309 U.S. 495, page 500 to 503; *U.S. vs. The Thelka*, opinion by Mr. Justice Holmes, 266 U.S. 329 at pages 339 and 340. And opinion by Mr. Justice Field in *The Siren* case. Those are admiralty cases and involve a res which is involved here, I take it. This is basically a suit for, at least one claim of the Government is a suit for possession of this plane. So you may want to consider whether the admiralty cases are applicable here, such as *The Thelka* case I just cited. *The Siren* case is *Wallace* 74 U.S. 152 at pages 153 and 154.

Now, assuming that the court would have jurisdiction, as I say, of the counterclaim against the United States, it is not properly pleaded.

And as far as Col. J. L. Ulricson is concerned,

if you are suing him in his official capacity, you are, in effect, suing the United States. If you are suing him as an individual, then it would be necessary to predicate any jurisdiction of this court upon diversity of citizenship. And there is no allegation here as to the citizenship of Col. Ulricson.

Mr. Charles C. Finn: Your Honor, I ask that the pleading be amended to show, and on information and belief, that he [16] is a citizen of the State of Nevada.

The Court: No. Your cross-complaint has already been amended once. If you had denominated that as a counterclaim, is Col. Ulricson a defendant?

Mr. Charles C. Finn: Yes.

The Court: You would have to get permission to bring Col. Ulricson and add him as a cross-defendant to the action, and you would have to supply a pleading that complies with rule 8. This Pleading doesn't.

Mr. Charles C. Finn: May we have that permission, your Honor?

The Court: Yes. The motion to dismiss the so-called cross-complaint of Charles C. Finn is granted.

How much time do you wish in which to serve and file a counterclaim, if so advised?

Mr. Charles C. Finn: Your Honor, we have got considerable problems. We have an appeal before the——

The Court: Well, this case is going ahead. I can give you 20 days under the rules. If you need 20

days you may have 20 days in which to serve and file a counterclaim. [17]

* * *

October 12, 1954.

* * *

The Court: May it be stipulated then, Gentlemen, that for the purpose, of this pending action only, and not for any other purpose, and subject to the understanding that such admission is for the purpose of this action only and for no other purpose and may not be used against any other party in [11] any other proceeding, or in favor of any party in any other proceeding, that during the period from September, 1951, to May of 1952, the defendant, International Airports, Inc., a corporation, at the request of the defendants George C. and Charles C. Finn furnished labor and materials which were used and consumed in the improvement of the airplane in the suit of the reasonable market value of \$10,200; and furnished storage service of the reasonable value of \$550; and that such labor and materials and supplies and services were so furnished in good faith by International Airports, Inc., without knowledge of any claim of the plaintiff to ownership of the airplane, and in the good-faith belief on the part of International Airports Inc., that the defendants George C. and Charles C. Finn were during that period, the owners of the airplane?

Mr. Abbott: The Government, your Honor, can stipulate that work was done——

The Court: Now, wait a minute. Don't be repeating my stipulation. Will you accept it or not? If you say no, that stops that.

Mr. Abbott: We cannot accept it, your Honor. It goes to the very heart of our case against International.

The Court: You can't accept the figures?

Mr. Abbott: We cannot.

The Court: What goes to the heart of your defense? The [12] question of whether or not it was done in good faith?

Mr. Abbott: And without knowledge or notice.

The Court: Can you accept it without that?

Mr. Abbott: Without putting them to the necessity of trying the matter?

The Court: Can you accept the stipulation if you eliminate the part that states that it was done in good faith and without notice of the plaintiff's claim?

Mr. Abbott: We cannot, your Honor.

The Court: What part of it can you not accept?

Mr. Abbott: We cannot accept the values because they were litigated in the state court, and the Finns and International are the only people who know the extent of the work done took the position that the work was not of that value. The Government desires——

The Court: The court litigated it over there. Do you want to hear it again here?

Mr. Abbott: Only in general terms, your Honor.

The Court: I will put the case on the calendar

for 1970, if you are going to take that attitude.

Mr. Abbott: It is the Government's view, your Honor, that a witness for International could describe what was done.

The Court: I am not going to hear it. The Superior Court has litigated that between these parties. It was [13] presumably not a collusive lawsuit.

Mr. Abbott: The view of the Government testimony devoted to that issue would not exceed, to the most, a couple of hours. It is rather anticipated we will acquiesce in the statement of the witness once we heard it.

The Court: Unless the Government can say that the Government feels that the action in the state court was collusive, then the Government ought to accept the——

Mr. Abbott: The defendants Finn were not represented by counsel in that action.

The Court: I don't care. They were before a court and unless you think it was a collusive action you should be willing to accept the state court's action if these people are willing to accept it.

Before we get into that, suppose we see if the defendants Finn are agreeable.

Mr. Charles C. Finn: Well, your Honor——

The Court: Just say yes or no. That saves a lot of time.

Mr. Charles C. Finn: Your Honor,——

Mr. George C. Finn: Yes, your Honor.

The Court: Very well. I don't know whether

International Airports will accept it or not. I was merely stating a stipulation that I thought [14] would——

Mr. Blackman: International Airports, Inc., will accept the statement.

The Court: All or any part of it?

Mr. Blackman: Yes, your Honor.

Mr. Wallace: Seaboard Surety Company cannot accept the stipulation.

Mr. Nelson: We cannot accept the stipulation.

The Court: That settles that. If that is typical of what we are going to run into tomorrow, gentlemen, we just might as well forget it. I am not going to waste my time. I will try the case. Anything in the state court that has been adjudicated before between the parties, if you can't even stipulate to that, why, there is very little hope you might be able to stipulate to anything, I suppose. In particular, when the Government starts out not even to stipulate what the state court adjudicated, that is a pretty bad sign.

Mr. Abbott: We were not a party to that action.

The Court: I don't care. I know you were not a party to the action. But it is a state court, a duly constituted court. Unless you think it was collusive action between the parties, why would you want another court to adjudicate that matter of the amount and the value of the work done? Now, on the question of good faith or the question of notice of the plaintiff's claim, that was not in issue, I take it, [15] over there; but as far as what was in issue between the Finns and the Airport—and it

was presumably an adversary proceeding adjudicated in good faith by a court of competent jurisdiction—why you gentlemen can't accept that, I don't know; and particularly the United States Government.

Mr. Wallace: If your Honor please, speaking for Seaboard Surety Company, it was my understanding that in the stipulation there was included some notice or knowledge by International Airports.

The Court: We eliminated that. In my discussion with the Government I didn't understand that the stipulation, as it remained, covered anything more than the furnishing of the materials and labor and service and the supplies, during that period, of a reasonable value of a certain amount, at the request of the Finns, and for which the airport, I take it, has not been paid.

Mr. Blackman: That is correct.

Mr. Wallace: If the court please, at a date on or about March 11, 1952, in the midst of this period which service was being furnished, a bill of sale was given Seaboard Surety in New York for this aircraft, and whether notice reached International Airports or not, we have no information.

The Court: Well, I eliminated the question of good faith. I attempted to limit it to what was adjudicated in the state court. As I understand what was adjudicated, there [16] was the furnishing of the labor, material, supplies and service during that period; and the value of it.

Mr. Abbott: Your Honor, we will employ an expert to review the record in the state court pro-

ceeding and give us an estimate of the value of the materials as shown in that proceeding, and we may be in a position to stipulate on this point. The Government in effect by stipulating at this time would be conceding something that——

The Court: Conceding that the state court in adversary litigation between the parties most vitally interested properly adjudicated the matter, which is apparently more than the parties themselves conceded.

Mr. Abbott: We are cognizant of the fact that the Finns were not represented by counsel.

The Court: What difference does that make?

Mr. Abbott: Well, I could assume that the absence of counsel could make quite a difference on the outcome of a litigation.

The Court: It might unless you deny any was furnished at all. I take it when it comes to furnishing the amount and value the court would make the same determination whether counsel was present or not.

Mr. Abbott: It may be that the only witnesses called on this point were witnesses by International Airports.

The Court: The minutes of the court will show who was [17] called.

Mr. Abbott: We haven't examined it for that purpose.

We will make every effort to verify the amount of the claim, and if we can possibly stipulate to it we will do so.

The Court: Only for the purpose of this action.

The only suggestion was made for the purpose of this action. It seems to me the Government would be in very poor grace to say that the Government wouldn't accept a result reached by a court of competent jurisdiction in adversary litigation between the two parties who were really in interest, unless the Government thought it was a collusive suit.

Mr. Abbott: The Government is in no position to suggest it was a collusive suit, your Honor.

The Court: It seems to me that the Government in good grace should accept that determination and not ask this court to try it over again. I have no intention of trying it over again, gentlemen. If you won't agree on that for the purposes of this case there is no use in talking about agreeing to anything. I don't expect to waste my time trying the case under those circumstances. I will put it at the foot of my calendar. [18]

* * *

October 18, 1954.

* * *

The Court: Is there anything else to take up at this pretrial conference?

Mr. Charles C. Finn: Yes. I have something that I haven't been able to complete here; something which the court has indicated, in some of the cases, that the court had, and we looked them up and it seems to indicate that there would be no validity to our counterclaim unless we first made a claim

against the Government in the Court of Claims, or to the Accounting Office. [274]

The Court: How much money is demanded in the counter-claim?

Mr. Charles C. Finn: The same amount as the Government, \$8,000 a month, according to the Government's figures.

The Court: That's a set-off, really, against the Government's claim, isn't it?

Mr. George C. Finn: Yes, your Honor.

The Court: What does the statute say?

Mr. Charles C. Finn: It said no claim could be allowed unless the Government—unless you had first made a claim which was refused, and if it hadn't been refused in the matter of 15 days, the claim could be withdrawn and a suit instituted.

The Court: Haven't you made a claim against the Government?

Mr. Charles C. Finn: Not to the proper authorities, not to the Accounting Office.

The Court: Does the Government make the contention no claim has been made under the statute?

Mr. Abbott: We do, your Honor.

The Court: Perhaps you better get off the claim this afternoon. Does the statute say when the claim must be made?

Mr. Charles C. Finn: No, your Honor. It says before any claim—that a claim must be made before a suit could be [275] brought.

The Court: You make your claim. I suggest you do it immediately.

Mr. Charles C. Finn: We went to the Accounting

Office, and there doesn't seem to be any particular form that we can find for making the claim. So we will just submit our counterclaim in letter form to the Accounting Office, and do whatever we can to get it through proper channels.

The Court: Do you have an extra copy of it?

Mr. Charles C. Finn: Yes.

The Court: Just send them a copy of the counterclaim and explain in your letter that you are asserting that claim pursuant to the section of the statute.

Mr. Charles C. Finn: Will it be necessary for them to answer?

The Court: Either that, or 15 days must elapse.

Mr. George C. Finn: We wouldn't have any counterclaim by the 26th of October if they don't answer.

The Court: You may have one before the time this is all over. I will hear your evidence on it, if necessary.

What is the section of Title 28 that deals with this?

Mr. Abbott: Section 2406, your Honor. [276]

* * *

October 27, 1954; 10:00 A.M.

The Court: Are there ex parte matters? Call the calendar.

(Other court matters.)

The Clerk: 14309, United States vs. George C. Finn, et al.

Mr. Abbott: Ready for the United States, your Honor.

Mr. Blackman: Ready for International.

Mr. Nelson: Ready for Vineland School District and Peter A. Bancroft.

Mr. Wallace: Seaboard Surety ready, your Honor.

Mr. George C. Finn: Not ready, your Honor. We would like to make a statement, please.

The Court: What do you mean you are not ready? At the pretrial hearing there was no objection raised whatever.

Mr. George C. Finn: Your Honor, I raised the objection on our constitutional right for a trial by jury, and I wish to make a statement on that effect under Amendment VII of the Bill of Rights. It states:

“In suits at common law, where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise in any court of the United States than according to the rules of [4*] common law.”

We wish to preserve our right to trial by jury and wish to make the statement that this is a matter of a \$198,000 lawsuit initiated by the Government, and as a right of a citizen we have made our demand for a trial by jury. We have never intentionally or unintentionally waived that right; nor have we ever waived any right.

The Court: I made the ruling on that previously.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

You are not privileged to bring it up again.

Mr. George C. Finn: Your Honor, may I state for the record that the objections of the Government not to try this case before a jury is a violation of our constitutional right.

The Court: As I told you at the last hearing you lost your right to trial by jury, as a matter of right, by failing to comply with Rule 38.

At your request, I stated the court would impanel a jury in an advisory capacity, since the right to trial by jury had been waived by you and all parties, the court would sit with the jury, but the jury will sit only in an advisory capacity to the court, and not as a matter of right.

A. Anything further on that?

Mr. Charles C. Finn: Yes, your Honor. That was not our request. We did not request——

The Court: You don't wish an advisory jury in the case?

Mr. Charles C. Finn: We do not wish an advisory jury. [5]

The Court: You don't wish any jury at all?

Mr. Charles C. Finn: No, your Honor, we wish a jury.

The Court: I have ruled against you, and I don't expect to rule, gentlemen, but once on one question. That has been disposed of and I don't expect to hear anything more on that.

Mr. Charles C. Finn: We would like to have a continuance until that matter can be reviewed.

The Court: The motion is denied. Do you wish an advisory jury? Do you wish the court to hear it without——

Mr. Charles C. Finn: We wish the court to hear our case before the jury as provided by the jury as provided by the Constitution. We do not feel that we waived any right to a jury. Demand for a jury is a right granted to every citizen, that the circumstances under which we have demanded a jury is entirely in accordance with the law, that Rule 38 says it is timely within 10 days within time of service of the last——

The Court: I have ruled against you. I don't care to hear anything further.

As I told you before, I am not going to run a law school in the course of this trial. You are speaking of things that are elementary, and if you had a lawyer he would tell you not to even mention it, except to make your record; and once the court has ruled, the court doesn't rule twice on the same matter. You will learn that, too. [6]

Mr. Charles C. Finn: I would like to bring up the matter——

The Court: I have gone to great lengths the other day at the pretrial hearing. I don't expect to take time this morning.

Mr. Charles C. Finn: I would like to bring up the matter of the amendment proposed by the School District, and that the Government was admitting to that amendment providing it did not open the door for trial by jury——

Mr. Abbott: At this time, the Government has a motion which it——

Mr. Charles C. Finn: May I finish?

The Court: Don't interrupt. [7]

Mr. Abbott: At this time the Government has a motion which it should address to the court.

The Court: Don't interrupt.

Mr. Charles Finn: At this time I feel that such a——

The Court: Be seated, Mr. Abbott.

Mr. Charles Finn: ——that such a proposal by the Government violated our constitutional rights, that the way was paved, and we do not concede that we waived any right. But, in addition to that, in the due process and orderly process of the court and the law, the way was paved for the opening of the door for a jury trial, which was denied us because the Government complained about the amendment of the complaint on the ground that it would open the door for a jury trial.

Now, the Government has consistently refused to have their case brought before a jury of the people.

The Court: There has been no consistent refusal.

Do you have anything further to say? I have ruled on this matter, and I don't expect to hear anything more about it. If you prefer the court to try it without even an advisory jury, you may make a motion to that effect.

Mr. Charles Finn: We do not prefer the court to try it at all without a jury, under our rights under the Constitution.

The Court: That is disposed of. It is easy to talk about your rights under the Constitution, but there is no [8] right once it has been waived. Be seated, please.

Mr. Charles Finn: We have complied with the law in every respect.

The Court: That is your opinion.

Mr. Charles Finn: In serving these briefs and demanding a jury trial within the 10-day period, as the law provides.

Mr. Abbott: May the Government be heard, based on the statements made?

The Court: No, I do not want to have a reply to incriminatory statements that are made.

Mr. Abbott: But I want to address a motion to the court.

The Court: After we have disposed of this, you will be heard.

Mr. Abbott: Thank you, your Honor.

The Court: Is there anything more that you want to say?

Mr. Charles Finn: No, your Honor.

The Court: I have ruled on it. Do you have any further motions to make? I have ruled on the jury question. I don't want to hear another word about it.

Mr. Charles Finn: Your Honor, we take the same position that we took when bail was refused.

The Court: I don't want to hear anything about the criminal case. I have told you the criminal case has absolutely no bearing upon this case. I don't want to hear [9] anything more about it.

Mr. George Finn: The principle of constitutional guarantees in both cases is the same. They are identical, your Honor, and if we take the position——

The Court: What motion are you making now?

Mr. George Finn: If we take the position in one case, we must take the position in the other case, in this case, that we cannot be denied our constitutional guarantees, that there is no way they can be denied to us.

The Court: No one is denying you any constitutional guarantees.

Mr. George Finn: Your Honor——

The Court: Do you have any further motion to make? We have a jury to select here.

Mr. George Finn: May we be excused——

Mr. Charles Finn: I would like to know whether the amendment that Mr. Blackman has made has opened the door to a jury trial.

The Court: Mr. Blackman hasn't made any amendment.

Mr. Charles Finn: He has amended his pleadings, I think, to provide for estoppel. Is that not correct?

Mr. Blackman: Your Honor has granted leave to International to amend the pleadings.

The Court: I haven't seen any pleading, and it was just the granting of an amendment to conform to the proof, was it [10] not?

Mr. Blackman: We have prepared, but we haven't as yet had an opportunity to file an amendment to our answer to set forth the equitable defense of estoppel.

The Court: I haven't allowed any amendment. I have indicated I might allow amendments later to conform to the proof.

Mr. George Finn: It is my understanding an

amendment was allowed to the answer of International to the plaintiff's complaint.

The Court: Have you seen any amendment?

Mr. George Finn: No, your Honor, I haven't seen it, but I have information from Mr. Blackman that he would so amend.

The Court: He has not so filed. If an amendment is received and filed, the matter may be set at large. I am not ruling as to that.

Mr. Charles Finn: Well, may we have a continuance until such an amendment is filed and served?

The Court: No, the case is going to trial this morning on the pleadings that are here.

Now, I haven't heard any of the other parties. They may have some motions to make, too.

Mr. Charles Finn: Before the case goes to trial, your Honor, we would like to have a jury trial.

The Court: I have heard from you on that, and until the [11] situation changes I propose to hear nothing further on the subject.

Mr. George Finn: Your Honor, we must take the same position consistently.

The Court: You have made your record on it. You have made your motion. You don't have to jump up every time something comes up and make the same argument.

Mr. George Finn: I maintain we must maintain the same position.

The Court: It will be understood without your repeating it throughout this trial, every minute of this trial, that you are demanding a trial by jury. Is that understood?

Now I don't want to hear anything more about it unless the pleadings situation changes. If you are going to act as your own lawyer, I will have to treat you as a lawyer.

Mr. Charles Finn: We have been treated that way.

Mr. George Finn: Your Honor, I would like to make a motion that the Finns be excused without any detriment to their rights in this matter.

The Court: No, the Finns will be present. Both of you gentlemen will be present throughout this trial.

Mr. George Finn: We do not wish to go to trial, your Honor, in violation of what we consider to be our constitutional rights, the same as when we were refused bail.

The Court: Be seated. [12]

Mr. Charles Finn: And we are here by order of the court?

The Court: Yes, throughout this trial, and you will be in contempt of court if you absent yourselves from the trial.

Mr. George Finn: For the record, we are not representing ourselves in the trial. We are not being represented in the trial. We are objecting to such a trial without our constitutional rights being preserved.

The Court: Be seated.

Mr. Abbott: At this time the Government has a motion which, with propriety, I request should be addressed to the court.

The Court: Please make it from the lectern, Mr. Abbott.

Mr. Abbott: The motion being made by the Government, your Honor, is one which I cannot make with propriety in the presence of the panel.

The Court: Why wasn't it made at pretrial?

Mr. Abbott: It is a motion occasioned by the remarks of the defendants Finn just concluded, your Honer.

The Court: I don't propose to hold any bench-side conferences on the subject, Mr. Abbott. I expect to impanel a jury and proceed in this matter this morning.

Mr. Abbott: This is a matter I am duty-bound to present to the court.

The Court: You may present it in writing.

Mr. Abbott: It is a matter, your Honor, which relates [13] to the misconduct on the part of the defendants Finn in the face of the court and in the face of the panel of the jury in their remarks just concluded, which were misleading, false, and inflammatory.

The Court: That is the trouble about having laymen trying to try their lawsuits. I suppose the doctors would have the same trouble in the hospital if they had patients up there trying to cut out their own appendixes. It is the same idea. And, of course, if a lawyer had said what they had said, the lawyer would be on his way to jail right now.

Mr. Abbott: I quite agree.

The Court: But I have to make some allowances for ignorance.

Mr. Abbott: But is the Government in its presentation to be prejudiced by the conduct of the defendants?

The Court: No. I expect the jury to have common sense, and they have common sense. I can appreciate your making the motion, but there is no necessity of making it at the bench.

Mr. Abbott: For the record, then, the motion is that this panel be discharged and that a new panel be called.

The Court: The motion is denied. If the jury were a matter of right, I would grant the motion, but this is to be an advisory jury, advisory to the court, and I shall trust the panel.

Mr. Abbott: Then will the court instruct the panel that [14] the statements made by the defendants Finn were not true, and that they have no bearing upon this case?

The Court: I will instruct the panel that all statements and comments of counsel and the parties who try to act as their own counsel are not evidence in the case, nor are the comments of the court, and they are to be disregarded entirely.

The jury to be chosen is to make its findings upon the evidence in the case, and not upon sometimes unsupported statements of the parties and counsel.

Mr. George Finn: Your Honor——

The Court: Are there any other motions before we proceed to impanel an advisory jury?

Mr. George Finn: Your Honor, I make a motion to strike the last comment as to acting as our own counsel.

We do not desire to act as our own counsel. It is necessary as a matter of circumstance, and it is not upon our own volition. It is because of the lack of finances only.

The Court: I appointed an attorney to represent you, the attorney who represented you in the criminal case to which you have referred here, and you filed an affidavit, both of you, stating that your constitutional right was to be free to act as your own attorneys and to act for yourselves. Didn't you?

Mr. George Finn: Your Honor, there was an affidavit as [15] to counsel of our own choosing. The court appointed a counsel who didn't wish to act for us, and we are under obligation, moral obligation, not to demand the time from that counsel.

We have no objection to the counsel, your Honor, other than we are morally obligated not to use him in any capacity because he has served in the past to our benefit, has been our friend, and while the action of this court may have been to help us, it has tended to destroy our friendship and to change our whole approach on counsel in this matter. There isn't an attorney in town who has offered before to help us who has offered since, because they have some fear that they will be drawn into the case.

The Court: And they don't want to help you, then if they fear being drawn into the case. The only way they can help you is to come here and represent you.

Mr. George Finn: There are many ways they

could have helped us, and others have volunteered, and because we had the Cohns, we wouldn't accept the voluntary service, and since the Cohns have been pushed into the case, these other people have declined, and we are wholly without counsel, and without any possibility of obtaining counsel.

The Court: But it is your own fault. Mr. Cohn was satisfactory to you in the criminal case, and you voiced no objection to it until after I had appointed him to represent you. Then you came in with an affidavit saying that you had [16] the constitutional right to select your own attorney, which is true. Then I appointed Mr. Cohn as a friend of the court, so he would be available to assist you.

Mr. George Finn: Yes, your Honor.

The Court: But you have never chosen to make use of his services. You preferred, both of you, to stand up and act as your own lawyers. Now, if you are going to act as your own lawyers, I would expect you not to complain about it. You can't have your cake and eat it, too.

Mr. Charles Finn: Your Honor, may I explain the situation?

The Court: No, nothing further on that. The motion is denied.

If there are any other motions you wish to make, you may make them.

Mr. Charles Finn: I respectfully request the court to clarify this position with respect to Mr. Cohn, and in all due respect to Mr. Cohn, because he has been a very fine person, a very fine friend.

The Court: Mr. Cohn is not on trial here.

Mr. Charles Finn: I meant in fairness to the court. He is a very ethical man.

The Court: No one is questioning that. I have heard no one questioning that.

Mr. Charles Finn: He has done a good deal for us. At [17] the time Mr. Cohn was appointed it was not Mr. Cohn's wish to serve in that capacity.

The Court: Yes, I recall that. [18]

Mr. Charles C. Finn: And if we forced him to serve in that capacity it would subject Mr. Cohen to arrest in contempt of court if he should refuse our request. We could not bring such an imposition on Mr. Cohen. It would have ruined his law practice.

The Court: I don't care to hear anything more about that. That is disposed of.

Any further motion? Ready to have a jury called, gentlemen?

Mr. Abbott: We are ready, your Honor.

Mr. Nelson: Ready, Your Honor.

Mr. Blackman: Ready, your Honor.

Mr. Wallace: Ready, your Honor.

Mr. Charles C. Finn: Not ready, your Honor.

Mr. George C. Finn: Not ready, your [19] Honor.

(Thereupon the court interrogated the jury panel.)

The Court: Are there any further questions which counsel for the Government would have the court put to the panel?

Mr. Abbott: No further questions, your Honor.

The Court: The defense?

Mr. Nelson: No further questions for the School District, or for Mr. Bancroft.

Mr. Wallace: No questions for Seaboard Surety.

Mr. Blackman: No questions.

The Court: The defendants Finn?

Mr. Charles Finn: We are here only by order of the court, your Honor.

The Court: Mr. Clerk, did the defendants Finn receive a copy of the jury list?

The Clerk: Yes, your Honor.

The Court: Very well. Gentlemen you are entitled to three challenges to a side, and I will allow the defendants Finn three separate challenges of their own.

Do the defendants Finn have a copy of the jury list?

Mr. George Finn: No, your Honor.

The Court: The clerk stated he turned over to you a copy. Did you fill it in? Did he explain what to do about it?

Mr. Charles Finn: No, your Honor.

The Court: Do you wish to have it explained to you [20] again?

Mr. Charles Finn: We are just taking the position we are here just by order of the court.

The Court: Do you wish to exercise any challenge?

Mr. Charles Finn: We have no further statement to make, except we are here by order of the court. We aren't participating here.

The Court: You had better participate. I don't

know who is going to represent your interest if you don't. The court can't act as attorney for any of the parties.

Mr. George Finn: Your Honor, our interest is not in the airplane primarily. Our first interest is our constitutional guarantees. When we fought a war, we didn't know anything about the rules.

The Court: I don't want any of that flag waving here. This is just a suit over a piece of property. It has nothing to do with waving the flag.

Mr. George Finn: It has to do with my constitutional rights which I insist be protected.

Mr. Charles Finn: We are in the court of the United States.

The Court: You don't need to remind me of that.

Mr. Charles Finn: Under the Constitution——

The Court: You have been here several days through pretrial hearings, and you have been conducting yourselves like [21] gentlemen, and now because we get an audience I don't want you to change your course of conduct.

Mr. Charles Finn: We don't want to change our course of conduct, your Honor. I feel we are still gentlemen. We have always been gentlemen.

The Court: You gentlemen may mark your jury lists, sign them, and hand them to the clerk. The first thirteen names without a challenge will serve as the jury and as the alternate.

Are all the challenges in, gentlemen?

(Thereupon the documents were handed to the clerk.)

(Thereupon the jury and one alternate selected were duly sworn.) [22]

The Court: Does the Government wish to make an opening statement?

Mr. Abbott: The Government does, your Honor.

Mr. Charles C. Finn: Before you proceed, may I ask the court a statement?

The Court: Yes.

Mr. Charles C. Finn: We appreciate that our rights can be adjudicated in this matter along with the rights of the others, and that if such an adjudication is in our favor, if we get the airplane or even a large sum of money, it would not be satisfactory. We do not want those things in lieu of our constitutional right and guarantee of trial by jury. Any decision by this court will not be satisfactory in lieu thereof.

The Court: Well, of course the court doesn't go around asking anyone to approve its decisions, Mr. Finn. If the court did there would always be at least one side in every case who would be dissatisfied; never get approval.

You are here in this case and the case has been pending a long time, and we are going to trial. It's been agreed all along. We have been in pretrial conferences here and there has never been any objection to this trial date, and you will be here. This is your one chance to have your day in court. If you don't wish to participate, that is your privilege.

Mr. Charles C. Finn: We wish to submit, your

Honor, that [23] we feel we have been manipulated out of a jury trial, which our constitutional rights provide, by the refusal to admit certain amendments which would open the door to a jury trial, by the Government refusing to submit its case to a jury and——

The Court: I will hear no more on that subject.

Mr. Abbott: Your Honor, the Government cites——

The Court: The next time I hear from you on that subject there will be something more to be said. I make allowances to some things, but——

Mr. Abbott: The Government cites Mr. Finn's statements as made as misconduct, and moves the court for an order of mistrial.

The Court: The motion will be denied. I will rely upon the good sense of this jury to disregard all of this kind of talk. It is the kind of talk that lawyers are trained not to make in the presence of the jury. Because it brings in extraneous matters. We have enough difficulty focusing our attention upon the evidence in the case.

These defendants are laymen. They have chosen to represent themselves here, and that is their right. They are entitled to do it.

I will ask the jury to disregard all of these comments of the court and counsel, unless as I say, there is a stipulation as to certain facts. You just regard it as so much chaff that you have to separate from the grain in your quest [24] for the truth as to the facts here.

Mr. Charles C. Finn: Your Honor——

The Court: Proceed with your opening statement, Mr. Abbott.

But before you do—Mr. Clerk, is there any occasion to require the further attendance of any members of the jury panel?

The Clerk: No, your Honor.

The Court: All members of the jury panel who have not been chosen to serve in this case are now excused until you are again called. The court appreciates you coming here and making your services available.

You may proceed, Mr. Abbott.

(Whereupon the opening statement on behalf of the plaintiff as made by Mr. Abbott.) [25]

(Opening statement on behalf of the Vine-land Elementary School District and Peter A. Bancroft by Mr. Nelson.)

The Court: Do you wish to make an opening statement, Mr. Blackman, or you, Mr. Wallace?

Mr. Blackman: I do, your Honor, but in view of the hour, does your Honor think it might be reserved until after the recess?

The Court: We will take the noon recess.

Ladies and gentlemen, before we do, I would admonish you of your duties not to converse or otherwise communicate among yourselves or with anyone else upon any subject touching the merits of this trial, and not to form or to express an opinion on the case until after it has been finally submitted to you for your verdict.

That admonition, because of its manifest impor-

tance, I will give to you each time before we separate at the noon recess and adjournment time. You are not to permit anyone to communicate with you in any way, by newspaper, radio, or television, or in any other way on any subject touching the merits of this trial. You are not even to communicate among yourselves on any subject touching the merits, but are to keep an open mind until all the evidence is in and until you have heard the summations of counsel, and the instructions of the court, and are not to form or express an opinion on this case until after it has been finally submitted to you [26] for your verdict.

You are now excused until 2:00 o'clock this afternoon.

The court remains in session, gentlemen, until the jury have retired.

(Thereupon the jury retired from the courtroom.)

The Court: Recess until 2:00 o'clock.

(Whereupon, at 12:05 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same date.) [27]

Wednesday, October 27, 1943; 2:00 P.M.

The Court: Any ex parte matters?

The case on trial, is it stipulated, gentlemen, the jury are present?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulate.

Mr. Wallace: So stipulated.

The Court: Is it stipulated the jury are present?

Mr. George C. Finn: Our jury is not present.

The Court: I said "the" jury are present.

Whether you stipulate or not, the record will show that the jury are present.

Mr. George C. Finn: Yes, your Honor.

Mr. Charles C. Finn: We do not so stipulate, your Honor.

The Court: Very well. I only asked the stipulation as a matter of form. I don't even need to look at you gentlemen. I will merely say, the record will show that the jury are present.

Now, be seated

Mr. Charles C. Finn: Thank you.

The Court: Any of you wish to make an opening statement?

Mr. Blackman: If the court please, first, your Honor, [28] if I may move this lectern back a little bit out of my way. Out of sight is out of mind, and I don't want to be left out of mind in this case.

The Court: You may move it wherever it is most convenient.

Mr. Blackman: Thank you, your Honor.

(Opening statement on behalf of defendant International Airports by Mr. Blackman.) [29]

The Court: Does the defendant George C. Finn wish to make an opening statement?

Mr. George C. Finn: Your Honor, we are here only by order of the court.

The Court: Here is your chance to get up and talk for an hour, if you want to, and show the jury what you expect to prove.

Mr. George C. Finn: If we had a jury, your Honor, we would talk for an hour;—

The Court: Are you speaking for both of you?

Mr. George C. Finn: —two hours.

The Court: What about the defendant Charles C. Finn?

Mr. Charles C. Finn: I am of the same opinion, your Honor.

The Court: Here's your opportunity to make an opening statement to this jury on whatever you expect the evidence on your behalf will show in this case.

Mr. Charles C. Finn: We submit, your Honor. We don't have the opportunity to try our case before a jury; that this is a court trial and not a jury trial, inasmuch as the jury is an advisory jury.

The Court: Very well. This is your chance to make any opening statement you wish.

Mr. Charles C. Finn: Your Honor, we have no statement to make whatsoever, except we are here by order of the court. [29-A]

The Court: Very well. I don't expect to offer you an opportunity every hour on the hour, or anything like that. I expect you to represent yourselves. I have enough to do to preside over the trial, and I won't make any further offers to you, unless the law requires, in view of your statement. If you have anything further to say, you address the court just as any lawyer or any other party.

Does Seaboard Surety Company have an opening statement to make?

Mr. Wallace: Yes, if the court please.

(Opening statement of defendant Seaboard Surety Company by Mr. Wallace.)

The Court: Any further opening statements any party desires to make?

If not, the Government may call its first witness.

Mr. Nelson: If the court please, I have one matter which I would like to bring to the attention of the court before we get into the trial of this case, and that is, the School District being here from Bakersfield, we don't have our own stenographic help. There have been a few clerical errors appear in our memorandum of facts and law brief. For the record, we would like to clear them up.

The Court: Do you wish to call in the copies, and——

Mr. Nelson: If we could point out the page and word at this time and the parties make the corrections—— [30]

The Court: How many are there?

Mr. Nelson: I don't believe there are too many; approximately eight of them, your Honor.

The Court: Very well. You may go through them, seriatim, and call attention to them.

Mr. Nelson: This is our amended statement of facts and memorandum of law.

The Court: Filed when?

Mr. Nelson: I believe it was Monday. Yes, that was the 25th.

On page 4 of those facts, line 28, the word “not” should appear after the last word in that sentence.

“The Finns were not * * *”

The Court: Next?

Mr. Nelson : The next correction, your Honor, is in the memorandum of law on page 1.

The Court: Another document?

Mr. Nelson: It is the one attached to the statement of facts, your Honor.

The Court: Very well.

Mr. Nelson: On page 1, line 14, the word “implied” should be changed to “implemented.”

The Court: Next?

Mr. Nelson: Page 4 of the same memorandum of law, line 14, before the word “mutilated” should appear “sold,” s-o-l-d, [31] “if sold”—“sold if mutilated * * *”

The Court: Next?

Mr. Nelson: Page 6, line 8, the word “from” in the middle of that line should be changed to the word “form.”

Page 9, line 17, where a period appears; it should be a comma. That is not two sentences, and runs right on.

Page 10, line 22, the word “e-i-g-h-e-r,” should be “either”—typing error.

Line 32 should have after the statement, “civil code section,” figure “3539.”

Page 11, on line 27, should be inserted after “exhibit A,” the words “for identification.” [32]

Page 13, line 13, the words at the beginning of that line “purchased or” should be changed to “purchaser of.”

And on line 5 of the same page after the word "reservation" and before the word "title" at the end of that line should be inserted the word "of."

On line 13, at the end of the line after "measure of damages" the word "if" should be changed to "is."

Now, we hate to toss the blame on our secretarial help here in town, because they certainly did very well——

The Court: You don't need to place the blame anywhere. Is there any objection to the amendments being made?

Mr. Abbott: No objection.

The Court: It is ordered that the changes may be made by interlineation, and you may make them on the originals, Mr. Nelson, and place your initials and the date thereon.

Mr. Nelson: Thank you, your Honor.

The Court: I want the record to show that Mr. Cohn, who was appointed by the court to represent the defendants Finn and also as a friend of the court is here in attendance throughout these proceedings.

Mr. Abbott: May it please the court. At this time the Government will offer in evidence Plaintiff's Exhibit 2 RFC aircraft appraisal sheet, dated March 23, 1946, and Plaintiff's Exhibit 6, individual aircraft record card.

The Court: Any objection to the offer? [33]

Mr. Nelson: No objection, your Honor.

Mr. Blackman: No objection.

The Court: Is there a stipulation that the documents are genuine in all respects in which they purport to be?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: They are received in evidence.

Mr. Abbott: I will request that the documents be handed to the jurors for their inspection.

The Court: Let's not take the time at the present time. Let's get the evidence in, and then you may pass it to them at the appropriate time. Exhibits 2 and 6 are received in evidence.

(The documents referred to, marked Plaintiff's Exhibits Nos. 2 and 6, were received in evidence.)

The Court: Any other offer?

Mr. Abbott: Not at this time.

The Government will call Mr. Peter A. Bancroft. Take the witness stand, please, Mr. Bancroft.

PETER A. BANCROFT

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, [34] please?

The Witness: Peter Bancroft.

The Clerk: Be seated, please.

(Testimony of Peter A. Bancroft.)

Direct examination

By Mr. Abbott:

Q. What is your occupation, Mr. Bancroft?

A. School superintendant.

Q. And you are superintendent of what school?

A. The Vineland School District.

Q. How long have you held that position, sir?

A. Ten years.

Q. Is the Vineland School District a school district organized pursuant to the laws of the State of California, Mr. Bancroft? A. It is.

Q. And has been for the entire time that you have held that position; is that correct?

A. Yes, sir.

The Court: What type of district is it, Mr. Bancroft?

The Witness: It is an elementary public school district, your Honor.

The Court: Will it be stipulated, or will the stipulation be offered as to the provisions of the Code under which it is organized?

Mr. Nelson: So stipulated, your Honor.

The Court: What are the provisions? [35]

Mr. Nelson: Where are they?

The Court: What are they? Will you specify the provisions of the Code?

Mr. Nelson: I can obtain that, your Honor. Off-hand I couldn't point them out. There are approximately 12 different types of districts.

The Court: I have that in mind. That is the

(Testimony of Peter A. Bancroft.)

reason I don't want to read all of them. I want just the one.

Mr. Nelson: I will bring them in.

Q. (By Mr. Abbott): Calling your attention to the spring of 1946, Mr. Bancroft, were you actively engaged in your duties as superintendent of the school at that time? A. Yes, sir.

Q. And did you at that time engage in correspondence with a Mr. Heddleston, director Educational Aircraft Disposal Division, Office of Aircraft Disposal, War Assets Administration, United States Government? A. Yes, sir.

Q. Generally speaking, was that correspondence directed to the subject of possible acquisition of aircraft by Vineland from the Government, pursuant to the Surplus Property Act of 1944?

A. Yes, sir, it was.

Q. Did you receive through the mail from Mr. Heddleston certain forms to be completed by you, Mr. Bancroft? [36]

A. We received quite a number of forms from Mr. Heddleston.

Mr. Abbott: I will request that the clerk provide Plaintiff's Exhibit 1, for identification.

The Court: Do you wish it placed before the witness?

Mr. Abbott: And that it be placed before the witness, your Honor.

The Court: Do you have Plaintiff's Exhibit 1 before you, Mr. Bancroft?

The Witness: Yes, your Honor.

(Testimony of Peter A. Bancroft.)

The Court: Have you had an opportunity to examine it?

The Witness: Yes, your Honor.

The Court: What is your question?

Q. (By Mr. Abbott): Was that form received by you through the mail from Mr. Heddleston in the spring of 1946, Mr. Bancroft?

A. I am not certain whether this form was received in the mail or picked up by me from the War Assets Office in Los Angeles, Mr. Abbott. It was, however, signed by me.

Mr. Abbott: Will you please place before the witness Defendant Vineland's Exhibit D, for identification?

The Court: Do you have before you Vineland's Exhibit D, for identification,—the purchase order?

The Witness: Yes, your Honor.

The Court: Have you had an opportunity to examine it? [37]

The Witness: Yes, your Honor.

The Court: What is your question?

Q. (By Mr. Abbott): Did you receive Vineland's Exhibit D, which you are now inspecting, through the mail from Mr. Heddleston?

A. Mr. Abbott, this could have been the same situation as with the agreement. It is possible that I received it in the mail or from War Assets office in Los Angeles.

The Court: In any event, you received it?

The Witness: Yes, sir.

The Court: In the month of June, 1946?

(Testimony of Peter A. Bancroft.)

The Witness: Yes, your Honor.

Mr. Abbott: Solely to refresh your memory with respect to the subject matter of the last two questions, Mr. Bancroft, I will ask the clerk to mark for identification a letter dated May 27, 1946, addressed to you and purportedly executed by Mr. R. A. Heddleston.

The Court: Is it material how he received them? Just that he did receive them?

Mr. Abbott: It is material that he received them from Mr. Heddleston at Washington, your Honor.

The Court: Very well.

Mr. Abbott: I will ask the letter last described be marked as Plaintiff's next in order, for identification, and that it be placed before the witness. [38]

The Court: It will be so marked. Plaintiff's Exhibit 8, Mr. Clerk?

The Clerk: Yes, your Honor, Plaintiff's Exhibit 8.

The Court: 8, for identification.

(The document referred to was marked Plaintiff's Exhibit No. 8 for identification.)

The Court: Have you examined Exhibit 8, for identification?

The Witness: Yes, your Honor.

The Court: What is your question?

Q. (By Mr. Abbott): Does examination of that document, Mr. Bancroft, refresh your recollection, so that you are able to state whether or not you received Plaintiff's 1, the agreement form, and

(Testimony of Peter A. Bancroft.)

Vineland's D, the purchase order, through the mail from Mr. Heddleston at Washington?

A. This letter, Mr. Abbott, states they were sent to me. I still don't remember whether I got them in the mail or from the office in Los Angeles.

Q. Had your correspondence up to the date of receipt of those forms been with any person connected with War Assets other than Mr. Heddleston?

A. I am not certain on that. Most of it was with Mr. Heddleston.

Q. Did you on or about June 25, 1946, complete and sign Exhibit 1, for identification, and return it to Mr. [39] Heddleston?

A. Yes, sir.

Q. At Washington?

A. Yes, sir.

Q. Did you on that same date complete purchase order form, which is Vineland's D, for identification, and return it also to Mr. Heddleston?

A. Yes, sir.

Q. Now, calling your attention to the date of July 10, 1946, did you on or about that date pay \$300 to War Assets Administration at Ontario, California?

A. I am not certain as to the date.

Mr. Abbott: Will the clerk please place before the witness International Airport's Exhibit A, for identification?

The Court: What portion of the exhibit do you wish to direct the witness' attention to?

Mr. Abbott: The document is quite short, your

(Testimony of Peter A. Bancroft.)

Honor. It is entitled "Sales Receipt," and bears the date July 10, 1946.

The Witness: Would you restate your question again, please, Mr. Abbott?

Mr. Abbott: Will the reporter read it, please?

(The record was read.)

The Court: Are you calling the witness' attention to the document entitled "Sales Receipt"? [40]

Mr. Abbott: I am, your Honor.

The Court: Do you have it before you?

The Witness: Yes, your Honor.

The Court: What is the date of it?

The Witness: The date is July 10, 1946.

Q. (By Mr. Abbott): Now, does that document refresh your recollection to the extent of permitting you to state whether or not on July 10, you paid \$300 to War Assets Administration at Ontario, California? A. Yes, sir.

The Court: Did you?

The Witness: Yes, sir.

Q. (By Mr. Abbott): Did you personally travel to Ontario, California, to make that payment, or was it made by mail, Mr. Bancroft?

A. To the best of my recollection, it was made by me personally at Ontario, but I am not positive of that.

Q. Do you know the person, R. P. Bates, whose name apparently has been affixed to the document you are inspecting, International Airport's Exhibit A, for identification?

(Testimony of Peter A. Bancroft.)

A. I believe I have met Mr. Bates, but I would like to clarify this. This is a number of years ago.

Q. Did you meet Mr. Bates in connection with the payment of \$300 to him for War Assets Administration on July 10, 1946? [41]

A. It is quite possible, but I am not positive at this time.

Q. Would that have been your only dealing with Mr. Bates? A. That I couldn't be sure of.

Q. Could that have been your only dealing with Mr. Bates relating to the aircraft in suit?

A. There were a number of aircraft on the field at that time, as well as engines, propellers, and other instruments, and it may be that we had a number of discussions. I am not even positive that Mr. Bates was at Ontario at the time. I don't recall.

Q. Calling your attention to July 25, 1946, did you travel to Ontario, California, on that date with a Mr. J. D. Poole?

A. That I don't remember.

Mr. Abbott: May the witness be shown Plaintiff's Exhibit 4, for identification, please?

(The document was placed before the witness.)

Q. You now have before you Plaintiff's Exhibit 4, for identification, a form entitled "Release of Custody of Aircraft." Have you seen that form before, Mr. Bancroft?

A. I don't remember seeing this form before, no, sir.

(Testimony of Peter A. Bancroft.)

Q. Does the date on the form or any other material on the form refresh your recollection as to a trip you may have [42] made to Ontario, California, in the month of July 1946?

A. No, sir, it doesn't. With regard to Mr. Poole, who was the pilot of this aircraft, as I recall my only meeting with Mr. Poole was at the time that he flew the aircraft to our school. [43]

Did that occur in late July 1946, sir?

A. Well, I need help with that date, too.

Q. It is for that purpose you have been shown the form now before you. In that connection, was Mr. Poole employed by the Vineland Elementary School District to ferry the aircraft?

A. I believe he was.

Q. Did you go with him on the occasion when he did ferry the aircraft?

A. Yes, sir.

Q. And were you with him constantly on that date?

A. Only during the time of his flying the airplane. We didn't leave from Ontario. We left from another field about 15 or 20 miles East of Ontario; I believe it was there that I met Mr. Poole and we picked up the plane at that place. I don't know why it was transferred from Ontario. But we picked it up and flew it to a strip just South of our Sunset School, and as soon as he left the plane, I saw him no more that day.

Q. Mr. Bancroft, has the Vineland Elementary School District ever received from the United States a bill of sale to the aircraft in suit? Which

(Testimony of Peter A. Bancroft.)

aircraft can be more particularly described as "Army Air Force identification No. 42-3645."

Mr. Blackman: To which we object on the ground that the document speaks for itself, and we believe——

The Court: Sustained. [44]

Mr. Blackman: ——calls for a——

Mr. Abbott: In that connection, there is no document before the witness which even vaguely resembles a bill of sale.

The Court: Ask him what he received from the Government. Show the affirmative instead of attempting to show the negative.

Q. (By Mr. Abbott): Did you receive the document entitled "Sales Receipt," dated July 10, 1946, International's Exhibit A for identification, from some person employed by the War Assets Administration, Mr. Bancroft?

A. May I see that document, too, please?

Mr. Abbott: That document is before you.

The Court: July 10, 1946, when you paid the \$200, did some official of the War Assets Administration give you that sales receipt?

The Witness: Must be. My name is on it.

The Court: Your answer is yes?

The Witness: Yes.

The Court: Did you receive any other document in connection with the transaction?

The Witness: That I don't recall, your Honor.

The Court: What is your best recollection?

(Testimony of Peter A. Bancroft.)

The Witness: I don't recall any other, your Honor.

The Court: As far as you recall there was no other, is that it? [45]

The Witness: Yes, your Honor.

Q. (By Mr. Abbott): Did the Vineland Elementary School District receive either the original or a copy of the document entitled "Release of Custody of Aircraft," dated July 25, 1946, Plaintiff's Exhibit 4 for identification, a copy of which is now before you?

A. No. I have never seen this form before, that I can recall.

Q. Are you sufficiently familiar with the files of the Vineland Elementary School District to state whether or not they would contain a copy of that form? A. I am familiar——

Mr. Nelson: If the court please, in order to speed this matter up, I have so found that document, I believe, or a copy thereof in our file.

The Court: You offer a stipulation?

Mr. Nelson: We will stipulate the District did receive a "Release of Custody" document——

The Court: All of us can appreciate this happened more than eight years ago and a great many things have happened since this. Isn't that right?

The Witness: Yes, sir.

The Court: If you can offer that stipulation——

Mr. Nelson: I would so stipulate.

The Court: You stipulate to what? [46]

Mr. Nelson: That the Vineland School District

(Testimony of Peter A. Bancroft.)

did receive a "Release of Custody" document, which is being referred to by Mr. Abbott.

The Court: Being Exhibit—

Mr. Abbott: Plaintiff's Exhibit 4 for identification, your Honor.

The Court: Is that embraced in your stipulation?

Mr. Nelson: Yes, your Honor.

The Court: You accept the stipulation?

Mr. Abbott: So stipulate.

The Court: All counsel so stipulate? Whenever a stipulation is offered by any counsel and accepted by one, gentlemen, I shall assume that all join in the stipulation unless you expressly dissent. Is that understood? That applies to the defendants Finn, as well.

Mr. Charles C. Finn: Your Honor, we would like to stipulate that we do not enter this situation except by order of the court.

Mr. George C. Finn: We neither accept or deny the stipulation.

The Court: You do not stipulate and you do not dissent?

Mr. Charles C. Finn: We have nothing to say in that regard.

The Court: Very well. Are you offering Exhibit 4 in evidence. [47]

Mr. Abbott: It will be offered together with other documents relating to the aircraft in a short time, your Honor.

The Court: Very well.

(Testimony of Peter A. Bancroft.)

Q. (By Mr. Abbott): A moment ago, Mr. Bancroft, you testified there was a flight of an aircraft from a point within 15 or 20 miles from Ontario to your school district. Was that aircraft 42-3645, the aircraft in suit? A. Yes, sir.

Mr. Abbott: May it be stipulated, as it was at the time of the pretrial hearing, that the aircraft in suit, and that term will be used in this proceeding, is in fact the aircraft designated by Air Force identification No. 42-3645; further designated by manufacturer's serial No. 1-232; and by C.A.A. No. N-111H?

The Court: Gentlemen, you will have to bear in mind that the defendants Finn are not participating in the trial, as far as I understand their announcement. So you will have to rely entirely upon the stipulations they made at the pretrial hearing.

Mr. Abbott: I wish to present the stipulation at this time, your Honor, because the jury may be assisted by it in following the evidence.

The Court: Yes, but I call your attention to the fact that the defendants Finn are not joining in any of these stipulations. So the content of them, as far as they are [48] concerned, will have to be governed by what they stipulated to at the pretrial hearing.

Mr. Abbott: Then we ask the court instruct the jury there was a stipulation as last stated.

The Court: The Government, of course, recollects there were so many stipulations and so many documents. I don't have the memory. If you call it

(Testimony of Peter A. Bancroft.)

to my attention by an official record, you may read the record of the stipulation made at the pretrial hearing, if you feel so disposed.

Has it been transcribed?

Mr. Abbott: It has, your Honor. And, Mr. Mangel, would you find that stipulation?

The Court: This is a perfect illustration of the misfortune of not reducing it to writing and having it signed by all parties.

Mr. Abbott: The stipulation is quite lengthy and the transcript has been completed within the last few days, your Honor.

Q. (By Mr. Abbott): Mr. Bancroft, are you acquainted with the defendants George C. Finn and Charles C. Finn? A. Yes, sir.

Q. When did you first meet those individuals?

A. Approximately?

Q. Yes, certainly.

A. I'd say sometime during the year 1950. [49]

Q. Was it approximately in the fall of 1950, sir?

A. I'd rather not try to pin down dates because that far back they are very hazy.

The Court: Before you go into this, we will take the afternoon recess.

You are excused, ladies and gentlemen, for a recess of five minutes, subject to the usual admonition.

You may step down.

The Witness: Thank you.

The Clerk: The court remains in session.

The Court: Court remains in session until the

jury have retired. That is printed and put on every counsel table, and I take it it is still there. It has been there for years.

(Whereupon the jury retired from the courtroom.)

The Court: Stipulated, gentlemen, the jury have left the courtroom?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

The Court: Let the record so show.

If you have a transcript of these stipulations that were made at the pretrial hearing by the defendants Finn and the other counsel, if you so desire, if you supply me with the information, I will instruct the jury as to each, on the appropriate occasion, that the defendants Finn did so stipulate at the pretrial hearing. [50]

Mr. Abbott: In that connection, your Honor, the transcript was prepared at the request of the Government and the Vineland School District and I assume a copy is in the hands of the court.

The Court: I haven't seen it. Never make any such assumption as that. Don't assume I have anything. I have never seen anything like a transcript in this case.

Mr. Abbott: The custom has been that when the reporter furnishes a transcript, he prepares one for the judge.

The Court: I don't think he does, unless you buy it.

Mr. Abbott: An extra copy was ordered.

The Court: I haven't seen it .

We will recess for five minutes.

(Short recess taken.) [51]

The Court: Let the record show the jury is present. Do any other parties expect to call either of the defendants Finn as witnesses in this case?

Mr. Abbott: The Government does not, unless they take the stand and it is necessary to later call them with respect to matters to which they have testified.

The Court: During the recess I want to say I didn't quite realize from the remarks made the position taken. Do I understand your position, Messrs. Finn, is that you are only in attendance here by reason of the order of court? Is that correct?

Mr. Charles Finn: That is correct.

The Court: This is a civil trial, and the record will show that you can absent yourselves voluntarily if you like. Any time you want to go, you just leave.

Mr. Charles Finn: We have been here by order of the court, your Honor. Are we to leave by order of the court?

The Court: No, no. This is a civil trial, and you may remain in attendance if you like. But if

a party wants to go off in default in a civil action, it is his privilege to do so.

Mr. Charles Finn: Are we to understand that the court has rescinded its order that we are required to stay here?

The Court: Yes. Since you are not required as witnesses you are not required to remain. I am not ordering you to [52] leave. You are at liberty to stay, but the court never orders a party to remain in a civil suit unless he is called as a witness. This is a civil trial, and you are free to remain or go, as you like.

Mr. George Finn: Are we to understand, your Honor, it constitutes a default if we go?

The Court: It may. I do not attempt to advise you as to the consequences.

Mr. Charles Finn: We were under the impression the court had ordered us to be here during the trial.

The Court: I realize that by the statement that was made that you were here by order of the court. So you are not here by order of court in the sense you are required to stay. You can come and go as you like. I don't know what you can accomplish by your absence, but if you go the record will show you voluntarily absent yourself, and you will take the consequences, but one of them will not be contempt of court because of any order requiring you to remain, and any order heretofore made, will be rescinded, if made.

Mr. George Finn: That is what I want to know.

(Testimony of Peter A. Bancroft.)

The Court: I don't know that any such order was made.

Mr. George Finn: Your Honor, we will take cognizance of the court's remark on losing any rights.

The Court: You understand the trial will go on, and whether you are here or not, you will be legally bound by [53] any judgment that is settled.

Mr. George Finn: I take the position that we never waived any rights voluntarily.

The Court: I do not care to hear any argument about it. I am just merely telling you that there is no restriction on your motion or locomotion, so far as this court is concerned. You may come and go as you please.

Mr. George Finn: Thank you, your Honor.

The Court: You may proceed with your evidence.

Mr. Abbott: Will you take the stand again, Mr. Bancroft?

(The witness resumed the stand.)

Q. (By Mr. Abbott): At the close of the session just prior to recess there were questions asked relative to your first meeting with the defendants, George C. Finn and Charles C. Finn, Mr. Bancroft. Can you now recall the circumstances under which you first met them?

A. Yes, sir. I believe they were, the first time I met them, interested in surplus property aircraft which our district had.

(Testimony of Peter A. Bancroft.)

Q. Was that a meeting in the offices of the district?

A. No, sir, I believe it was probably informally. They just stopped by the school and inquired about aircraft we had on our school site.

Q. In any event, was that meeting before December of 1950? [54]

A. To my best recollection, it was.

Q. Did you on that occasion have any discussion with either of the Finns relative to a possible sale by the school district of the aircraft involved in this action?

A. It is quite possible. I think they inquired about aircraft generally.

Q. Was that inquiry one as to whether aircraft were for sale by the school district?

A. Yes, sir.

Q. Was there any offer made by the district or by the Finns at that time for purchase of an aircraft?

A. Not to my recollection.

Q. Were there subsequent conversations between yourself and George Finn and Charles Finn?

A. Yes, sir.

Q. In any of those conversations, was there a discussion relating to possible sale of the aircraft in suit?

A. Yes, sir.

Q. What was said on that subject?

A. My statement may sound slightly confused, but we talked, or I talked to the Finns a number of times, and a number of times regarding the purchase by them and the sale by us of this aircraft,

(Testimony of Peter A. Bancroft.)

and I believe all the early discussions were to the effect that we were not interested in a sale [55] thereof.

Q. Who initiated the topic of possible sale of the aircraft in suit to the Finns—you or one of them? A. I believe one of them, sir.

Q. And when it was first proposed, what was your response to them?

A. That we were not interested in sale of the aircraft because we were using it as a classroom, and we needed it. Well, it had never occurred to us to sell it.

Mr. Abbott: Mr. Clerk, will you please place before the witness Vineland's Exhibit C, for identification, a document dated December 5, 1950.

(The document referred to was handed to the witness.)

Q. Do you recongize the document last described, Mr. Bancroft? A. Yes, sir.

Q. Did you receive it on or about December 5, 1950? A. Yes, sir.

Q. That document appears to be a bid for the aircraft in suit. Did you have any discussion with the defendants Finn about the time of receipt of that document?

A. Well, I am sure we did, sir.

Q. And what was said by either of them, and what was said by you at that time?

A. To the best of my recollection, this series of talks represented over a period of time a strong

(Testimony of Peter A. Bancroft.)

interest by [56] the Finns in purchasing this aircraft. We just as strongly said that we were not interested.

At the beginning, why, the offer of the Finns was limited, and as they became more interested and determined to reach an agreement with us on disposal of the aircraft, why, their offer became greater, and apparently at this time, about December 5th why, they felt that by submitting this offer that they would crystalize our thinking. We had never even at this time, as I recall, wished to dispose of the aircraft.

The Court: What time is this time?

The Witness: That is December 5, 1950, your Honor.

The Court: And this offer is Exhibit——

The Witness: Exhibit No. C.

Mr. Abbott: This is Vineland's Exhibit C, for identification, your Honor.

The Witness: I might add, Mr. Abbott, in addition to this, that even though this is an offer received from the Finns, that we had not advertised or shown any public interest in disposal at this time.

The Court: So far as you know, they were just tempting you, is that it?

The Witness: Yes, your Honor.

Q. (By Mr. Abbott): Now, prior to the time that you received this document you are now holding, Vineland's C, [57] for identification, had the matter of possible sale of the aircraft in

(Testimony of Peter A. Bancroft.)

suit to the Finns been raised at any meeting of the board of trustees of the Vineland Elementary School District?

A. I don't think there is any question that we had discussed it, yes, sir.

Q. Do you have with you today the minutes of the board of trustees of the Vineland Elementary School District? A. Yes, we have.

Mr. Abbott: May those minutes be marked for identification and placed before the witness? We request that they be marked Plaintiff's 9, for identification.

The Court: So marked.

(The document referred to was marked Plaintiff's Exhibit No. 9 for identification.) [58]

Mr. Nelson: Your Honor, at this time, if it would save any time of the court, we would be glad to stipulate that these are the minutes, and are genuine, and are as they purport to be.

The Court: Are they copies?

Mr. Nelson: Yes, they are a copy. They might even be the original copy. Are they?

The Witness: A part of them are originals, and others are copies.

The Court: Any objection to the receipt of them in evidence?

Mr. Nelson: No objection, your Honor.

Mr. Abbott: In that event, your Honor, at this

(Testimony of Peter A. Bancroft.)

time the Government will offer the entire record of the minutes in evidence, and if there is inconvenience to the School District resulting, it may be that at the close of the trial we can have the pertinent portions photostated and return them to the School District.

The Court: If the School District desires them, the Government can have them photostated and substitute the photostats for the originals. Exhibit 9 is received in evidence.

(The document referred to, and marked Plaintiff's Exhibit 9, was received in evidence.)

Mr. Abbott: We will be happy to supply them in that fashion. [59]

May Exhibit 9 be placed before the witness, please?

(The document was placed before the witness.)

Q. (By Mr. Abbott): As you are now viewing Exhibit 9, the minutes of the Vineland Elementary School District, Mr. Bancroft, are those minutes correct and complete?

A. To the best of my knowledge, sir.

Q. They are in fact kept by you, are they not, sir?

A. They are kept by the District.

Q. Well, are you the particular person who prepares the minutes?

A. At the time of 1950, yes, sir.

(Testimony of Peter A. Bancroft.)

Q. What period is embraced by the minutes which are before you, Plaintiff's 9?

A. July, 1942, through December, 1951.

Q. Being more specific, Mr. Bancroft, is there any action, official action of the board of trustees of the Vineland Elementary School District, relative to the aircraft in suit which is not reported in the minutes before you, Plaintiff's 9?

A. There is no official action that I know of, sir.

Q. You understand what I mean by official action. A resolution of the board of trustees at a formal meeting of that date.

A. Yes, sir; to my knowledge, all resolutions are in the minutes. [60]

Q. And, in particular, are resolutions relating to the aircraft in suit?

A. That would cover the same group, yes, sir.

Q. Are all the transactions between the United States and the Vineland Elementary School District in June and July 1946, which you have previously described in your testimony, also included in those minutes?

A. I would like to make a statement there, if I may, Mr. Abbott, that at the time these minutes were kept in 1942, I was the secretary to the School District, in addition to being district superintendent, and in addition to a number of duties, such as buying groceries for the cafeteria, I wrote the minutes, and kept the payroll, and many other things, and obviously in a district of six to seven hundred children that is a pretty good-sized job,

(Testimony of Peter A. Bancroft.)

and so the minutes were kept, and to my knowledge we passed very few resolutions, as such. We had board minutes of action, but we didn't have discussion, and they are not in too much detail at the time. So as you refer to resolutions pertaining to agreements with the Government, we probably discussed them at a regular board meeting, but I don't recall any minutes of resolutions as such.

Q. Well, is there any proceeding of the board of trustees of the Vineland Elementary School District relative to the transaction between the United States and Vineland in June and July of 1946 which is not recorded in Plaintiff's [61] 9, the minutes before you?

A. I don't recall any resolution, formal resolution. We did discuss the agreement, and permission was granted to proceed with the agreement with the Government, but so far as a written resolution, I don't recall any.

Q. Whatever was done was recorded in the minutes; is that correct, Mr. Bancroft?

A. Not necessarily.

Q. What action did the board take in June and July of 1946, relative to the transaction between Vineland and the Government previously described, which is not recorded in those minutes?

A. Mr. Abbott, we are becoming specific again, as to months, and so with that in mind, I don't recall exactly what happened during those months. We had a number of discussions at regular board meetings, but whether it was formal and recorded

(Testimony of Peter A. Bancroft.)

in the minutes in every detail of those meetings, that I cannot say.

Q. Do you have any present recollection of any action by the board of trustees in connection with the transaction between Vineland and the United States, in the year 1946, which action by the board is not recorded in those minutes? [62]

A. We discussed the proposal to obtain property from the Government, and, as I recall, we did that at a regular board meeting, and approval was given to go ahead and obtain property, and at the same time, as I recall, approval was given to establish the aviation program in the district. I don't recall seeing in the minutes the formal notation of any resolution to that effect.

Q. Does the absence of a notation of resolution indicate that there was no resolution?

A. That is possible.

The Court: What do you mean by "resolution"? Someone says, "I move," and someone else says, "Seconded," and it is carried? Is that a resolution?

Mr. Abbott: That is my understanding, your Honor.

The Court: Is that your understanding of resolution?

The Witness: No, sir. We have—well——

The Court: I apprehended you were misunderstanding each other. That is the reason I am interrupting you. What difference does it make if it was moved, and seconded, and carried? That is sufficient, is it not?

(Testimony of Peter A. Bancroft.)

Mr. Abbott: I don't attach any technical significance to the word "resolution," simply a motion adopted by the board.

The Court: Is there anything in issue here about what the school district did in getting the aircraft? [63]

Mr. Abbott: Yes, your Honor. The Vineland Elementary School District, through its counsel, in the brief and in the opening statement has thrown open the whole question as to whether the school district has taken any official action relative to this aircraft, either as to disposition——

The Court: Why don't you ask him a leading question, then, and not what is shown in the minutes? If the trustees took the action, that is sufficient.

Mr. Abbott: That is what I was trying to get at, your Honor, and I frankly don't know whether they did or not.

The Court: What is the inquiry? Did you go after the plane from the Government?

The Witness: Yes, we did.

The Court: Did the board pass upon it?

The Witness: They agreed, yes, sir.

The Court: Adopted the aviation program for the school district?

The Witness: Yes, sir.

The Court: And by board action authorized the acquisition of the plane from the Government?

The Witness: Yes, your Honor.

(Testimony of Peter A. Bancroft.)

Q. (By Mr. Abbott): Was the Form 65 agreement, Plaintiff's Exhibit 1, for identification, discussed at a board meeting?

A. Mr. Abbott, I am not certain at this time whether [64] the actual form was discussed, but we did discuss purchase of the aircraft in suit.

Q. Well, what is your best recollection as to whether or not there was any discussion of the Form 65, Plaintiff's 1?

The Court: Let's go at it this way: Did you acquire the plane from the Government? Did you act for the district?

The Witness: Yes, your Honor.

The Court: Were you authorized to do whatever was necessary to get it?

The Witness: Yes, sir.

The Court: Did the board by motion adopted authorize you to do whatever was necessary to get it?

The Witness: I am not positive by motion, but with agreement by the board. You see, some of these topics may be vague here before the court, but I can say at this time we didn't have the minutes in detail as complete as they should be. Many items were discussed, and if we were in agreement, that was it. Sometimes, such as having work done on something of a specific nature, there would be an entry as such, but every discussion of the board or every agreement was not always entered.

The Court: The presumption as to regularity of official action, I assume, is that it was all regular.

(Testimony of Peter A. Bancroft.)

Mr. Abbott: I will move on, your Honor.

Q. (By Mr. Abbott): Was there any action taken by the [65] board after receipt of Vineland's Exhibit C, the document dated December 5, 1950, which appears to be a bid from the Finns to the school district?

A. I know that the bid was read, sir and rejected, and discussion attended the bid. Now, whether it is entered in the minutes, that I don't know.

The Court: If it is, it will appear in Exhibit 9, will it not?

The Witness: Yes, your Honor.

Mr. Abbott: Mr. Clerk, will you please place before the witness defendants Finn Exhibit L, for identification.

Mr. Charles Finn: Your Honor, this poses the question of the use of our exhibits.

The Court: They are here for any use that can be made of them. They are in the custody of the court when they are marked.

Mr. Charles Finn: Thank you very much.

Q. (By Mr. Abbott): Do you recognize the document last described, Mr. Bancroft?

A. I need it just a minute here to examine.

Q. Certainly.

A. Yes, sir. I think I recognize it.

Q. Did you receive that document from the defendants Finn, with signatures apparently endorsed on there on or about the date it bears, January 19, 1950? [66]

A. I believe that to be the case, Mr. Abbott.

(Testimony of Peter A. Bancroft.)

There are no signatures on this one, but I think we did receive one that followed the one of December 5, 1950.

Q. And was there a discussion with the defendants Finn relative to possible sale of the aircraft at the time that you received the document you are now viewing, the Finns' L?

A. I am not certain if there was a discussion at the time, but certainly there was between the two documents, because there is obvious evidence here of an increase in their bid, and that was brought about by discussion, since we were dissatisfied with the one of December 5, 1950.

The Court: What was the bid of December 5, 1950? What did it amount to?

The Witness: Well, there is a letter, your Honor, explaining the use here.

The Court: Isn't there some money figure mentioned?

The Witness: \$3000 in cash was one item, your Honor.

The Court: Was that amount increased later?

The Witness: Yes, your Honor, to \$5000.

The Court: When was that increase?

The Witness: January 19, 1951.

Q. (By Mr. Abbott): There is a reference in the document now before you, the Finns' L, to release of restrictions imposed by the Government of the United States. Had there been any discussion on that topic between December 5, [67] 1950, and January 19, 1951?

(Testimony of Peter A. Bancroft.)

A. I don't recall anything definite. I assume there were, because if they are mentioned here, that must have been a worry of ours at that time as it became later.

Q. Do you recall anything else of the discussions between yourself and the Finns during the period I described in my last question?

The Court: Mr. Abbott, I suggest you refer to the defendants as the defendants Finn. Their name is not Finns, as I understand. It is Finn. Is that correct?

Mr. Abbott: I will do so, your Honor.

The Witness: Well, between these two dates, and the two bids, we had a number of discussions, some of them rather lengthy. In fact, I think some of them ran to 2:00 and 3:00 o'clock in the morning, and they were made generally and individually, wherever the boys found us, at school, or found me, and we still were not, as I recall at this time, interested in disposal of this aircraft, and so their bid or bids or interest in the plane increased in amount until the final contract and agreement.

Q. Now, did you have a discussion with them shortly after receiving the so-called bid dated January 19, 1951? A. Yes, sir, we did.

Q. Were only the defendants Finn present with yourself at that time, or were there other people there? [68]

A. I don't recall whether—at the time whether it was with the defendants Finn only, because there were times when they met with the board also.

(Testimony of Peter A. Bancroft.)

Q. Now, are you in your last statement, that there were times when they met with the board, referring to a time after January 19, 1951?

A. That I can't recall.

Q. Well, will you recall as best you can what the conversations were after receipt of the bid dated January 19, 1951, the defendants Finn L.

A. As I recall, this still was not a satisfactory bid. I think we felt that the plane was worth more to the district than had been offered, although obviously the offer was interesting, and our main purpose was that we used this as a classroom, and we didn't wish to get rid of it as a classroom use, so that always made any approach by us to their offers somewhat hesitant, and there is no doubt in my mind that as this was rejected by the board, that we did consult the Finns, and, of course, I think they wanted to know why, and we told them that it was still insufficient to our interests.

Mr. Abbott: Mr. Clerk, will you place before the witness Defendant Vineland's Exhibit A, for identification, a document entitled, "Notice for Bids," dated January 6, 1951.

The Clerk: That must already be over there. [69]

The Court: It was attached to the defendant's answer. I don't know whether it is here otherwise or not. Do you have an extra copy of it?

Mr. Nelson: It is attached to the defendant's answer.

The Court: Do you have an extra copy?

Mr. Nelson: We have, I believe. We have an

(Testimony of Peter A. Bancroft.)

extra copy of the answer, and attached thereto is a copy of the notice.

The Court: Do you wish to withdraw the exhibit from the answer and have it marked here separately?

Mr. Nelson: If the court please, we would be glad to give this copy, and have it marked.

The Court: Without the answer?

Mr. Nelson: Yes.

The Court: Detach it from the answer, and let it be marked.

The Clerk: All right.

The Court: As defendant, Vineland School District's Exhibit A, for identification.

(The document referred to was marked, Vineland's Exhibit A for identification.)

The Court: Place Exhibit A, for identification, before the witness, Mr. Clerk.

(The document was placed before the witness.) [70]

The Court: Have you had an opportunity to examine it?

The Witness: Not in detail enough, your Honor.

The Court: Proceed, and take your time. Let us know when you are finished.

The Witness: The question, Mr. Abbott?

Q. (By Mr. Abbott): Did you prepare that document, Mr. Bancroft?

(Testimony of Peter A. Bancroft.)

A. The Notice for Bids?

A. I don't believe I did.

Q. Yes.

Q. Did you assist in its preparation?

A. Indirectly, yes, sir.

Q. Who did prepare it, if you know?

A. I am not certain as to that, either. I believe the county counsel did. But I am not positive to that, either.

Q. Mr. Nelson?

A. That's the Notice for Bids?

The Court: Mr. Nelson's office?

The Witness: I believe so, yes, sir.

Q. (By Mr. Abbott): Now, did you supply to Mr. Nelson's office the information necessary to the preparation of the Notice for Bids?

A. Yes, sir.

Q. Calling your attention in particular to the second paragraph. [71]

“Bidders are expressly notified that the aforesaid aircraft was acquired by the district from the Government of the United States and the War Assets Administration, subject to certain restrictions on the use thereof under the deed of conveyance, and the successful bidder will be required to secure the necessary release to said restrictions from the property governmental agencies of the Government of the United States of America.”

(Testimony of Peter A. Bancroft.)

Was that language I just read based upon a conversation you had with the draftsman in instructing him how to prepare it?

A. Frankly, I don't know where that particular wording came into the agreement.

Q. Well, was that general topic discussed by you with the county counsel? A. Yes, sir.

Q. Was it discussed by you with the defendants Finn? A. I am sure it was.

Q. Now, calling your attention in particular to the date of the Notice for Bids, which is January 6, 1951, does that refresh your recollection or cause you in any way to add to or change your testimony relative to the board reaction to the bid dated January 19, 1951? A. Yes, sir, it does. [72]

Q. And what is your present recollection as to the action of yourself and the board after receipt of that bid of January 19, 1951?

The Court: Exhibit?

Q. (By Mr. Abbott): Exhibit L of the Finns for identification.

A. Evidently the bid, Exhibit L, dated January 19th, was submitted after the notice of posting, and so I think, as I made reference to the unsatisfactory status of this bid, that I figured it was prior to the posting of notice, which was January 6th.

The Court: By "this bid," you refer to Defendants Finn Exhibit L for identification?

The Witness: Yes, your Honor.

Q. (By Mr. Abbott): Then was there action

(Testimony of Peter A. Bancroft.)

taken with respect to the defendants Finn Exhibit L by the board in a formal meeting?

A. I haven't gone through all these minutes, obviously, Mr. Abbott. We have them indexed here for the convenience of the court. Is it necessary to do all this right now, because if——

Q. The minutes will speak for themselves. The question was narrative, to present the question to the jury. And I can read a short excerpt in order to present it in chronological fashion on that [73] date.

The Court: Reading from Exhibit 9, now?

Mr. Abbott: I am, your Honor. I am reading an excerpt from Exhibit 9, minutes of a meeting of the Board of Trustees of the Vineland Elementary School District dated January 22, 1951.

“Members present, Walter Johnson, Ray Mitchell, Philip Lundquist. Mr. Bancroft opened bid from Charles C. Finn and George C. Finn. Mr. Mitchell made a motion, seconded by Mr. Lundquist, motion carried, that the board accept this bid as submitted by George C. Finn and Charles C. Finn, subject to the approval of the bid itself by the county counsel, and subject to the contract arrangements as approved by both parties and the county counsel.”

Mr. Nelson: Your Honor, if it will save the court's time, again, we will point out the acceptance of the bid has been stipulated to by the parties here.

(Testimony of Peter A. Bancroft.)

The Court: Offer another stipulation for the benefit of the jury.

Mr. Nelson: We will so stipulate that the board of trustees did accept the Finns' bid on the date indicated in the minutes.

Mr. Abbott: And on the particular language quoted.

Mr. Nelson: Yes. I would also like to point out to the court at the present time this was not Mr. Nelson's office, [74] and inasmuch as I would like to claim the county counsel's office as my own, I am an assistant county counsel there, and I was not a member of the office at the time any of these transactions took place.

The Court: Very well. You concur in that?

The Witness: Yes, sir.

The Court: Mr. Bancroft will adopt that last statement as part of his testimony, I take it.

Q. (By Mr. Abbott): Were your dealings in connection with this matter with Mr. Gargano, the county counsel, Mr. Bancroft? A. Yes.

Q. Now, in the excerpt from the minutes dated January 22, 1951, which I have just completed reading, there is a reference to the approval of the bid itself by the county counsel and approval by both parties of the contract arrangements and approval thereof by the county counsel. Do you know whether or not the county counsel, in fact, approved——

Mr. Blackman: Just a moment. I believe that would be hearsay as far as this witness is concerned.

(Testimony of Peter A. Bancroft.)

The Court: Is there any question about it?

Mr. Nelson: I would object on the ground of privilege. What occurred between the District and its counsel in this matter would be for them alone to——

The Court: Is there any issue as to that?

Mr. Blackman: We have no issue. [75]

Mr. Nelson: I see no issue, no, sir.

The Court: May it be stipulated county counsel did or did not approve, whichever the case is?

Mr. Abbott: We offer the stipulation that he did approve.

The Court: For the purpose of this trial may it be stipulated he did approve?

Mr. Blackman: We will so stipulate.

Mr. Nelson: I would stipulate your Honor, to one extent, and that is he did approve as to the agreement that was drawn up. Now, in our office we don't, oftentimes, see the specifications that the District may have out at its office. We merely drew up the agreements and we draw them the way the District, ordinarily the way the District wants to.

The Court: Is the agreement here?

Mr. Nelson: And I will certainly stipulate——

The Court: What exhibit is it? Exhibit B?

Mr. Nelson: Yes, your Honor. We will stipulate that the county counsel did draw this agreement up.

The Court: Do you have an extra copy of that?

(Testimony of Peter A. Bancroft.)

Mr. Nelson: Yes, I do, your Honor.

The Court: As I understand it, Mr. Bancroft, the county counsel did approve of the arrangement insofar as the arrangement is embodied in the agreement, Exhibit B for [76] identification; is that correct?

The Witness: Yes, your Honor.

Mr. Abbott: The approval of the Board of Trustees, according to the minutes is also conditioned upon the approval of the bid by the county counsel. Therefore, I would——

The Court: The bid is part of the arrangement, isn't it?

Mr. Nelson: May I make this suggestion, your Honor? The county counsel's office may or may not approve particular transactions. As counsel for the School District, it is our duty to tell them the law when it is presented to us, and when we are asked; and as far as——

The Court: And I asked the witness if it were true that the county counsel approved the transaction insofar as it is embodied in Exhibit B for identification. That would be correct, wouldn't it?

Mr. Nelson: I would say that was correct, your Honor, with the exception of the specifications, which are not before us.

The Court: As far as the legal aspects are concerned, they were approved?

Mr. Nelson: Yes.

The Court: He didn't approve the business arrangement, I suppose, or disapprove?

(Testimony of Peter A. Bancroft.)

Mr. Nelson: That is correct.

The Court: You don't contend that he did, Mr. Abbott? [77]

Mr. Abbott: No, your Honor. I would request the further stipulation that he approved the bid, which was——

The Court: You mean approved as to form?

Mr. Abbott: Approved within the meaning of the minutes, your Honor, which require his approval as a condition precedent to the approval of the board.

The Court: As far as you understand, did the county counsel approve the bid, Mr. Bancroft?

The Witness: There is that word "approve." He concurred with us on it, yes.

The Court: According to your understanding, he approved the bid, did he?

The Witness: Yes, sir.

Mr. Abbott: I don't care to labor the point, your Honor, but the regularity of the proceeding is directly in issue as a result of counsel's opening statement.

The Court: But the presumption is that these transactions, like all transactions are fair and regular and the ordinary course of business was followed and that the law was obeyed. So you have the benefit of all three of those presumptions until there is some evidence to the contrary.

Mr. Abbott: Will the clerk please place before the witness Defendant Vineland's Exhibit B for identification?

(Testimony of Peter A. Bancroft.)

Q. (By Mr. Abbott): Have you reviewed the document last shown to you, Mr. Bancroft? [78]

A. Yes, sir.

Q. Do you recognize it? A. Yes, sir.

The Court: I take it you are referring to Exhibit B?

Mr. Abbott: I am, your Honor.

Q. (By Mr. Abbott): Is that a document prepared by the county counsel of Kern County?

A. Yes, sir.

Mr. Abbott: At this time, your Honor, the Government offers in evidence Plaintiff's Exhibits 1, 4, and 5; Vineland's Exhibits A, B and C; and the defendants Finn Exhibit L.

The Court: What about Exhibit D of Vineland? You are offering that?

Mr. Abbott: We do not offer that document, your Honor.

The Court: Is there any objection to the offer?

Mr. Nelson: No objection.

The Court: Plaintiff's Exhibit 1 for identification and 5 for identification are now received in evidence; as are Defendant Vineland's Exhibits A, B, C and D for identification; and Defendants Finn Exhibit L for identification, are now received in evidence.

Mr. Abbott: The Government's offer also includes Plaintiff's 4, your Honor, which I may have misheard the court, but I did not hear it on the court's order.

(Testimony of Peter A. Bancroft.)

The Court: Exhibit 4 is likewise received in evidence. [79]

(The documents referred to, and marked Plaintiff's Exhibits 1, 4, and 5, were received in evidence.)

(The documents referred to, and marked Vineland's Exhibits A, B, C, and D, and Finns' Exhibit L, were received in evidence.)

Mr. Abbott: Will the clerk please place before the witness Defendants Finn Exhibit X for identification?

Q. (By Mr. Abbott): Mr. Bancroft, you are now viewing a letter dated October 23, 1951, purportedly from yourself to the defendants Finn. Do you recognize that document? A. Yes, sir.

Q. Now, in it there is some reference to possession of the aircraft. Did you on or about that date deliver possession of the aircraft in suit to the defendants Finn?

Mr. Blackman: Just a moment. If the court please, we object to that as calling for a conclusion of law. I think the document speaks for itself. And there is another document which has already been introduced in evidence which indicates the possession was delivered on February 28, 1951.

The Court: Which is the other document to which you refer which you say is already introduced in evidence?

Mr. Blackman: The School's agreement dated February 28, 1951, Vineland's B.

(Testimony of Peter A. Bancroft.)

Mr. Abbott: That contains no record of any actual delivery at all. There is an undertaking to make delivery [80] there. I am referring to the physical act.

The Court: The objection is overruled. Do you understand the question, Mr. Bancroft?

I suggest you rephrase it, Mr. Abbott.

Mr. Abbott: I would be glad to, your Honor.

The Witness: I am not a lawyer, Mr. Abbott, and some of this is a little bit confusing.

Q. (By Mr. Abbott): Viewing now the document you have before you——

The Court: Exhibit X.

Mr. Abbott: Exhibit X.

The Court: If you say, "Viewing now Exhibit X before you," we would save some time there.

Q. (By Mr. Abbott): Can you state whether you delivered possession of the aircraft in suit to Charles Finn and George Finn on or about the date it bears, October 23, 1951?

Mr. Nelson: I must object to the word "possession." If he means physical possession rather than legal possession, I think he should so state.

Mr. Abbott: I will amend the question to include the "physical."

The Court: Actual physical possession.

Mr. Abbott: Actual physical possession.

The Witness: I am not certain as to the date.

The Court: Can you give us about when? [81]

It's been stipulated, hasn't it, at the pretrial hearing?

(Testimony of Peter A. Bancroft.)

Mr. Abbott: That is one point on which there was no stipulation, your Honor.

The Court: Give us the closest date you can, Mr. Bancroft.

The Witness: I am just not certain as to the date.

The Court: About when? Can you specify between one Christmas and the next? If you can, perhaps you can come toward the 4th of July and keep coming——

The Witness: I can't even remember what my wife's anniversary is.

Q. (By Mr. Abbott): Doesn't that letter refresh your recollection so you are able to say, Mr. Bancroft,—I am referring by "that letter" to Finns' X——

The Witness: This letter states that the district does release the plane, but it doesn't state when the plane actually took off from the school.

The Court: Can you give us within days before or after when it did?

The Witness: I am sorry——

The Court: Can you give us within months before or after?

The Witness: There were pictures taken, motion pictures of the plane taking off. It was green. We knew—we had a rain, because the plane delayed its take-off for a couple of days, so it was in the rainy season. [82]

Q. (By Mr. Abbott): Did you deliver actual

(Testimony of Peter A. Bancroft.)

physical possession on the date that the plane took off from the strip at Vineland?

A. What do you mean "physical possession"?

Q. Did you turn the aircraft over to the defendants Finn physically, Mr. Bancroft?

A. This letter, I would assume, would be physical turning—physically turning the plane over. It so states.

The Court: Is that your letter?

The Witness: Yes, sir.

The Court: Do you intend by that letter to give possession to the Finns?

The Witness: Physical possession.

The Court: Actual physical possession of the plane into the custody of the defendants Finn?

The Witness: Yes, your Honor.

Mr. Abbott: We offer in evidence Defendants Finn Exhibit X for identification.

The Court: Is there objection?

Received in evidence.

(The document referred to, and marked Defendants Finn Exhibit X, was received in evidence.)

Q. (By Mr. Abbott): Did you have any conversation with either of the defendants Finn on or about the time you delivered possession? [83]

A. Yes, sir.

Q. Can you recall that conversation now?

A. Yes, sir. It was mostly concerned with the technical details of take-off. As I say, the plane

(Testimony of Peter A. Bancroft.)

itself was ready for take-off during the rainy season, and the airport, or the strip of land, rather, in which the plane was to take off was too wet, and the sheriff's office, highway patrol and the fire department were all notified to be there—and I knew of those arrangements—as a safety factor.

Q. Referring, Mr. Bancroft, to Defendant Vine-land's Exhibit B for identification, which is before you, and particularly to page 4, which reads in part, and I will quote from paragraph 4.

“It is expressly agreed and understood that this agreement is contingent upon contractor's ability to secure the necessary clearances from the Government of the United States of America on restrictions now existing on use and possession of aforescribed C-46 aircraft No. 2-3645, by virtue of the deed of conveyance of said aircraft from the said Government of the United States to the District, and by virtue of related Federal laws on the use thereof * * *

and so on, relating certain undertakings, was there a discussion of that provision of the agreement with the Finns at [84] about the time that the aircraft was turned over to them physically?

A. I am certain there must have been.

Q. What was said on that occasion and on that topic?

A. I believe the Finns showed me a flight permit issued by C.A.A., Civil Aeronautics Authority, and I asked them at the time if this flight permit represented the release of restrictions which we

(Testimony of Peter A. Bancroft.)

wanted at the time and always had wanted under this contract and agreement, and they assured me that it was, that it would be impossible to get such a document unless it had the concurrence of the authorities in Washington. And I believe mention was also made at the time that War Assets Administration was one of those responsible parties.

Q. Did they tell you that the War Assets Administration had consented to release of the restrictions referred to in this Vineland's Exhibit B?

A. I am not certain whether War Assets was listed as one of the agencies, but it was my understanding that, according to them, that these restrictions had been removed and the permit issued by C.A.A., and that was evidence of that since that could be not done without it.

Q. Now, when you say it was your understanding, do you mean you were so told by the defendants Finn, Mr. Bancroft?

A. Yes, sir. [85]

The Court: Any objection on the part of any member of the jury to carrying on for another hour today? If there is none, we will take a brief recess at this time. If any of you object for any personal reason, why, you may raise your hand.

Very well. Seeing no objection, you may be excused now for five minutes' recess, subject to the usual admonition.

You may step down, Mr. Bancroft.

(Short recess taken.) [86]

(Testimony of Peter A. Bancroft.)

The Court: Let the record show the jury are present. You may proceed, Mr. Abbott.

Q. (By Mr. Abbott): Mr. Bancroft, during the interval between February 28, 1951, the date of defendant Vineland's Exhibit B, now in evidence, and the time in October of 1951 when you delivered physical possession of the aircraft to the defendants Finn, where was that aircraft situated?

A. At the Sunset School.

Q. And was it on the school grounds through all of that time? A. Yes, sir.

Q. Was it being used as a classroom during that period? A. Yes, sir.

Mr. Abbott: At this time, your Honor, I would like to read a few excerpts from Plaintiff's Exhibit 1, now in evidence, as they bear upon the next topic for examination.

The Court: You may.

The Witness: Pardon me, Mr. Abbott. Could I make an additional statement to your last question?

Mr. Abbott: Whatever is necessary to make it entirely correct, of course, sir.

The Witness: Now, until the time the plane took off, obviously there was work done on it, and in the last few weeks when considerable work was being done on engines, and [87] that sort of thing, it was not being used as a classroom; but up to that time it was.

Q. (By Mr. Abbott): That would be a period of approximately four weeks; would that be correct?

(Testimony of Peter A. Bancroft.)

A. It is possible, yes, sir.

Q. Not more than six, in any event?

A. I would rather not say, because that ties down the length of time the work was done, and I am not sure just exactly when it started, but until such time as the work became an inconvenience to use by students, we continued to use it.

Mr. Abbott: I will now read, ladies and gentlemen, a few excerpts from the agreement dated June 25, 1946, Plaintiff's Exhibit 1, now in evidence, a document Mr. Bancroft has signed for the Vineland Elementary School District:

"In consideration of the transfer of certain items of Aeronautical Property, under provisions of Surplus Property Act of 1944, Public Law 457, Vineland Elementary School District, located at Rt. 6, Box 207, Bakersfield, Calif., hereby certifies and agrees as follows:

"1. That said institution is an 'educational institution' as defined in Paragraph 8304.1 of Surplus Property Administration Regulation No. 4 * * *."

And then there follows a quotation from the regulation [88] not immediately pertinent. Paragraph 2 is: "That the property to be acquired hereunder is for the sole use of"—and I am inserting that word because there are a series of blocks for answers, and the particular block checked reads "tax-supported institution for one of the following

(Testimony of Peter A. Bancroft.)

nonflight purposes," and the purpose checked is "Instruction."

Paragraph 6: "That the acquired property will not be used for any actual flight purposes.

"7. That all acquired property when unfit for the above purpose will be sold only as scrap and then only after it shall have been rendered completely unfit and useless except for its basic material content. Sales consummated within three years of the date of acquisition must have the prior approval of the Disposal Agency.

"8. That this Agreement shall be effective for all future transfers of Aeronautical Property under the provisions of Surplus Property Administration Regulation No. 4, as amended from time to time."

I have read only a part of the document. The entire document will be before you for your inspection. [89]

Q. (By Mr. Abbott): Now, Mr. Bancroft, calling your attention to February 28, 1951, was the aircraft in suit on that day unfit for instructional use by a tax-supported institution?

A. No, sir. I feel that we could still use it as a classroom at that time.

Q. Then it was fit for instructional use by a tax-supported institution?

A. By any institution; school.

The Court: Construction, you mean?

(Testimony of Peter A. Bancroft.)

Mr. Abbott: I may not have been clear, your Honor. Instructional use.

Q. Is that the way you understood me, Mr. Bancroft? A. Instructional use, yes, sir.

Q. Thank you. Was there any time between February 28, 1951, and October 26, 1951, when the airplane in suit was unfit for instructional use by a tax-supported educational institution?

A. Probably during the time of readying the plane for flight, to which I previously referred.

Q. And was that activity of readying the plane for flight something done by the defendants Finn?

A. Yes, sir.

Q. And that occurred during the period of a few weeks prior to the date of delivery in October; is that correct? [90] A. Yes, sir.

Q. Was there any time during that period from February 28, 1951, to the date when the aircraft was flown away from Vineland, when the aircraft had been reduced to its basic material content?

A. Well, that "basic material content" is something which is quite controversial. I assume you mean had it been reduced to scrap?

Q. Well, let's answer that question then: Was it reduced to scrap during any of the period specified in my last question?

A. No, sir, it was not.

Q. Was it dismantled at any time in that period except in the process of repairing it or rebuilding it?

A. Yes, it was. The students used this airplane,

(Testimony of Peter A. Bancroft.)

used it not only as a classroom, but an actual operating airplane, as a tool in the class, and during that time, as previously, they would with hand tools, as a part of their instruction, remove parts from the airplane and reassemble them. So while it wasn't destroyed, or anything like that, it was used as partly dismantled and reassembled by the students in their classes.

Mr. Abbott: No further questions at this time, your Honor, by the Government.

Mr. Nelson: If the court please, we will reserve our [91] questions until we present our case.

The Court: Any further examination of Mr. Bancroft at this time?

(No response.)

The Court: You may step down.

By any of the parties?

(No response.)

The Court: You may step down.

Mr. Blackman: May the record show we would also like to reserve our examination until the presentation of our affirmative defense, your Honor.

The Court: Very well. I trust you gentlemen will not duplicate anything that has been covered.

Mr. Abbott: Mr. Krakrup, will you take the witness stand, please.

KAY KRAKRUP

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Kay Krakrup, K-r-a-k-r-u-p.

Direct Examination

By Mr. Abbott:

Q. What is your occupation, sir?

A. Airplane mechanic, and engine mechanic, and certificated—— [92]

The Court: We can't hear you. I can hardly hear you, Mr. Krakrup, and I don't know what the jurors way over there in the corner can hear.

The Witness: Well, I am an airplane mechanic and engine mechanic.

The Court: It is very important that you talk to them. Shout at them, if necessary.

The Witness: I am an airplane and engine mechanic, and designated C. A. inspector at Bakersfield Air Park.

Q. (By Mr. Abbott): How long have you followed that pursuit, sir? A. 30 years.

Q. Did you, during the period beginning February 28, 1951, and ending October 26, 1951, do work on a C46A aircraft bearing Air Force Serial Number 42-3645? A. Yes, I did.

Q. Did you do that work at the request of the defendants George C. Finn and Charles C. Finn?

A. I did.

(Testimony of Kay Krakrup.)

Q. Can you fix the period when you did the work any more precisely than was fixed in my preceeding question?

A. Yes, I have my work orders here.

Q. When was the work done by you, Mr. Krakrup?

A. I started September 14, '51, and finished in the month of October, October 26, '51. [93]

Q. Will you describe briefly the major items of work which you performed on the aircraft I have described to you?

A. Well, that is very hard to remember, eight years.

The Court: That is 1951?

The Witness: Yes. I mean three years probably.

The Court: When you finished was three years ago last Tuesday, was it?

The Witness: Yes.

The Court: October 26th?

The Witness: Yes.

Q. (By Mr. Abbott): Now, you have brought notes showing the charges you have made, have you not? A. Yes, sir.

Q. Refer to those if they refresh your recollection, and state to the jury, if you can, what work you did on the airplane.

A. Well, I assisted the Finn boys in making the plane fly, so that it could be moved out from Lamont, and in order to do that there was a lot of repairs and replacements to be done on the airplane.

(Testimony of Kay Krakrup.)

Q. I can't hear you. Will you please speak up a little for us?

A. We had to do a lot of replacements and repairs to the airplane.

Q. Go ahead. [94]

A. We had to do a lot of repairs and replacements of parts, like fuel pumps, carburetors, check valves, and, well, the hydraulic system. In other words, the whole fuel system was absolutely malfunctioning.

Q. Did you replace the fuel system, or just repair it?

A. Yes, all removable parts, and some of the lines. The airplane had been filled up with water, which had gone all the way up in the carburetors, and everything was stuck and locked solid and couldn't be moved.

Q. When you say everything was stuck, do you mean anything in the fuel system?

A. Yes, anything in the fuel system was completely inoperative; pumps and selector valves and all.

Q. Did you replace the pumps and selector valves, or did you merely repair them?

A. We replaced them all.

Q. Did you replace any other parts on the aircraft?

A. Wheels and ailerons; all wheels, the three wheels, the main wheels and tail wheel were replaced.

(Testimony of Kay Krakrup.)

The Court: The ailerons were recovered, is that it?

The Witness: Yes, they were recovered.

The Court: They were not replaced?

The Witness: No; recovered, put new fabric on them. [95]

Q. What other work, if any, did you do on the aircraft?

A. The biggest job was the removal of the remains in the fuel system after they had been filled up with water; lot of slush in the entire fuel system.

Q. Did you do any other work you have not described to the jury?

A. No, that is about everything; making ship flyable.

Q. Did you do all the work yourself, or did the defendants Finn do some of it?

A. No, the Finns had done a lot of it themselves before I came out there, and I helped them put the finishing touches on.

Q. Did you observe any other work had been done by the Finns? A. Yes, plenty.

Q. What work?

A. Well, like cleaning up the airplane, which was a very big item; and removing lot of excess weight from it.

Q. Will you explain what you mean by "excess weight"?

A. Well, like all the school equipment, benches and tables from the cabin, and plank floor and

(Testimony of Kay Krakrup.)

power units installed and radio equipment. We had to get it as light as possible in order to get it out of that small field.

Q. Did you observe they did any other work on the aircraft? [96]

A. No, that was about all there was done to the aircraft.

Q. Did you bill the Finns for the work that you did on the aircraft? A. Yes, I did.

Q. What is the amount of that billing?

A. \$600 for the work done at Lamont.

Mr. Abbott: No further questions of this witness, your Honor.

The Court: Any cross-examination?

Mr. Blackman: Just a very few questions.

Cross-Examination

By Mr. Blackman:

Q. Mr. Krakrup, where was this work performed? A. At the school in Lamont.

Q. What was that?

A. At the school property in Lamont, Vineland School District.

Q. Was all of it done at the same place?

A. All of it up to the 26th of October.

Q. Was any of it done at the Bakersfield Municipal Airport, or Kern County Municipal Airport, if the name——

A. If there were, I had no connection with it.

Q. Was anyone else working on the airplane besides you and the Finns? [97]

(Testimony of Kay Krakrup.)

A. Not that I know of. If you are referring to the period in Lamont, I will say yes.

Q. I am sorry, sir.

A. During the period—if you were referring to in Lamont, there was lots of outside work done.

The Court: At the Vineland school?

The Witness: Yes. At that period, there was lots of outside work contracted out.

Q. (By Mr. Blackman): What was the nature of the work? Will you describe it, briefly, please?

A. Well, machine work, and so forth.

Q. What type of machine work?

A. Making up all different things and fittings; and instruments had to be sent out and checked and repaired.

Q. Instruments were pulled out of the airplane and sent out on repair? A. Some of them.

Q. Overhauled and returned to the airplane?

A. Yes. The instruments with malfunction had to be taken out.

Q. What was the condition of the hydraulic system when you started in doing this work? Was it working? A. No.

The Court: Is that material?

Mr. Blackman: Well, just in order to develop a little bit [98] more what kind of work——

The Court: What difference does it make? He had to do whatever it was necessary to get it to fly away from that school.

The Witness: Yes.

The Court: Whether much or little, doesn't matter, does it?

(Testimony of Kay Krakrup.)

If it is material, I don't want to limit you, but I don't see where it makes any difference whether they had to put any propellers and new tires and new doors, whatever they had to do they did it to get it away from that school, isn't that so?

The Witness: Yes.

The Court: There is no claim being made here for it, as far as I know.

Mr. Blackman: No, your Honor. The only thing was that it would give the jury an indication of the condition of the plane before they started in to do any work on it, and the condition——

The Court: Isn't it agreed that the plane wasn't operable at the time until after this work was done on it?

Mr. Blackman: Yes, your Honor. However, it could be non-flyable for just the lack of a single pump, as far as that goes, or non-flyable——

The Court: Well, while you and I are discussing it you [99] could probably bring it all out. I was attempting to shorten it. The fact he testified he worked from September 14th to October 26th, I take it that that would indicate itself something was done. That is over a month.

Mr. Blackman: Very well, your Honor. We will not proceed with that line of inquiry.

That is all.

The Court: Any further cross-examination?

You may step down.

Mr. Nelson: No questions.

(Witness excused.)

The Court: Next witness?

Mr. Abbott: Mr. Duly, take the stand, please.

DOUGLAS DULY

called as a witness on behalf of the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Douglas Duly, D-u-l-y.

Direct Examination

By Mr. Abbott:

Q. What is your occupation, Mr. Duly?

A. Salesmanager, aircraft sales and service, Flying Tiger Line. [100]

Q. Have you had any technical education beyond the high school level?

A. Two years college.

Q. Where?

A. Massachusetts Institute of Technology, Boston.

Q. Did you specialize in any particular field there? A. Yes. Aircraft.

Q. After leaving the Massachusetts Institute of Technology, what was your employment?

A. Pan American Airways—you want the whole—from date of graduation until today?

Q. You might indicate very briefly the nature of your employment, whether aircraft industry, chemical industry, and——

A. I have been in aircraft all my life, since graduation, 1932. I have been——

Q. And has your activity in the aircraft field

(Testimony of Douglas Duly.)

been primarily in the field of buying and selling aircraft? A. Yes, for the last 10 years.

Q. During that period of 10 years when you have been employed in the purchase and sale of aircraft, by what employers have you been so engaged?

A. The last eight years by the Flying Tiger Line, and prior to that, Lockheed Aircraft Corporation.

Q. Do your duties in the course of your employment for [101] the Flying Tiger Line, require you to follow market trends in aircraft?

A. Very much so.

Q. Has that been true for the entire period you have been employed by Flying Tigers?

A. Yes. I have been responsible for both the purchase and selling of our equipment, which includes about 62 airplanes. 31 of them are the C-46 airplane.

Q. And are you required in the course of that employment to buy and sell aircraft?

A. Yes, I am.

Q. Have you been familiar with the sales of C-46A aircraft during the period from 1946 to the present time? A. Yes, I have, sir.

Q. Approximately how many such sales are known to you?

A. That I have been involved in in that particular type airplane? 40.

Q. Will you describe some of the most recent sales, briefly stating, not the amount of money in-

(Testimony of Douglas Duly.)

volved, but the nature of the aircraft and the buyer and seller and any special conditions accompanying the sale, if such special conditions exist?

A. In this model airplane?

Q. Yes. Please confine your answers to the C-46 aircraft. [102]

A. 1947, our company had various inquiries from out of the country buyers for the particular C-46 airplane. We weren't using it at the time but Slick Airways was a concern in our proximity, and had this type of airplane on hand. Any inquiries we had on that airplane, I usually follow through with Slick Airways.

Some of these airplanes, C-46A, were available in 1947, '48, through War Assets for \$5,000. They, in turn, were bought and resold to purchasers from South America for \$8,500; in that area, '47, '48.

Q. Go ahead, sir, if you have not completed.

A. The airplane seemed to be dormant, price-wise, beyond that figure until the Korean War. In 1951, April, we were the successful bidder in purchasing an airplane from the United States Air Force for \$31,000, and——

Q. Let me caution you, sir, to describe the sale and any special remarks you may have which bear upon the condition of the aircraft and the conditions of the sale; but not to, in the course of your direct examination, mention the sales price.

A. We haven't sold any C-46 airplanes in the last six months.

Q. Are you then, by reason of this continued

(Testimony of Douglas Duly.)

contact with the aircraft market, able to express an opinion as to the condition of the market at all times from July 25, 1946 [103] to the present date?

A. That is part of my business, yes.

Q. Now, have you ever seen Air Force Serial No. 42-3645, a C-46A aircraft?

A. Yes, I have.

Q. On what occasions have you seen it?

A. We purchased 18 C-46 from the Air Force in August 12, 1950. One of our mechanics advised me, in October, 1950, that there was a C-46 airplane in Bakersfield, and maybe our company would be interested in it for parts. And I saw that particular airplane you mention in about October, 1950.

Q. Was that the first time that you saw it?

A. I believe I flew over that area coming from Frisco one time a year before that and seen an airplane on the ground.

Q. On that occasion in October, 1950, did you inspect the aircraft inside and out?

A. Yes, I did.

Q. When did you next see the aircraft?

A. About the spring of '51.

Q. Where was it at that time?

A. Still at Arvin, Vineland School.

Q. Did you inspect the aircraft then inside and out?

A. Outside, not inside—outside, only.

Q. When did you next see the aircraft? [104]

A. In the immediate area of International Airports.

(Testimony of Douglas Duly.)

Q. Well, on what date was that, sir, approximately? A. It was in the fall of '51.

Q. Did you inspect the aircraft inside and out on that occasion?

A. As a matter of inspection, I went through it. I didn't see it for the purpose of inspection. I observed the airplane, and——

Q. When next after that date of inspection at International did you again see the aircraft?

A. Oh, I would have seen it possibly twice a month, three times a month during the total period it was there.

Q. Would that be roughly the period of October, 1951, to May of 1952? A. Yes, it would.

Q. Did you on any of those occasions inspect the aircraft on the inside? A. Yes, I did.

Q. How many times did you do so?

A. I would possibly be inside the airplane three or four times.

Q. Did you on every one of those occasions inspect it from the outside?

A. Observed it from the outside, yes.

Q. When did you next see the aircraft after the last [105] time you observed it at International Airports, Inc.?

A. I believe I seen it at the northeast end of the Lockheed Air Terminal one time, which was not on the property of International Aircraft.

Q. Do you recall the approximate date that you saw it then?

A. It would be April or May of '52.

(Testimony of Douglas Duly.)

Q. Did you inspect the inside of the aircraft on that occasion? A. No, I didn't.

Q. Did you observe the condition of the outside of the aircraft on that occasion?

A. Yes, I did.

Q. Have you seen it since that occasion?

A. Yes, I have.

Q. When, sir? A. October 22, 1954.

Q. Did you conduct an inspection of the aircraft on October 22, 1954? A. Yes, I did.

Q. Did you examine the interior of the aircraft on that date? A. Yes, I did.

Q. Did you examine the aircraft engines?

A. Yes. [106]

Q. Did you examine the instruments?

A. Yes.

Q. Did you examine the controls?

A. Yes.

Q. Did you examine the exterior surfaces?

A. Yes, I did.

Q. On each occasion when you made an examination did you examine each of the particular parts that I have referred to in my last questions, sir?

A. Yes, I did.

Q. Have you inspected the document entitled "Aircraft Appraisal Sheet," dated March 23, 1946, Plaintiff's Exhibit 2?

Mr. Clerk, will you place that exhibit before the witness, please?

The Witness: I have seen the document, yes.

(Testimony of Douglas Duly.)

Q. (By Mr. Abbott): And have you carefully analyzed the data which it contains?

A. Yes, I have.

Q. Have you also seen the document entitled "Aircraft Record Card," Plaintiff's Exhibit 6?

Mr. Abbott: I will ask the clerk to place that before you.

The Witness: Yes, I have, sir.

Q. (By Mr. Abbott): And have you studied the data which [107] it contains? A. Yes.

Q. Have you heard the testimony of Mr. Krakrup, the witness who preceded you on the stand today? A. I heard his testimony.

Q. Are you prepared to express opinions as to the market value and rental value of the aircraft described as C-46A, Serial No. 42-3645, that being an Air Force serial number, on dates from July 25, 1946, through February 1, 1953, as a result of the several acts you have described in your testimony?

A. The market value of the airplane during that period?

Q. On particular dates in that period, sir.

A. Value of the airplane could fluctuate. You name me the date, and I could give you the market value.

Q. What in your opinion was the fair market value of the aircraft described on July 25, 1946?

A. \$5,000.

Q. What in your opinion was the fair market value of the aircraft described during the period

(Testimony of Douglas Duly.)

February 28, 1951, through October 26, 1951? And if it changed during that period, you might so state.

A. February, 1951, to October, '51?

Q. Yes, sir. Let me simplify the question for you: What in your opinion was the fair market value of the aircraft described on February 28, 1951? [108]

A. Why I am hesitating on that, the airplane, if I remember right, was disassembled. If it was in an assembled condition it had an approximate value of \$20,000 to \$25,000.

Q. On what date, sir?

A. In February of '51.

Q. When you refer to a "disassembly," are you referring to a disassembly by International Airports? A. International Airports, yes.

Q. It has been stipulated for purposes of this action that their possession was from October, 1951, through May of 1952. I want to again point out the date of my question, which is February 28, 1951.

The Court: You are asking him to assume the airplane to be in an assembled condition.

The Witness: Yes. I am a year ahead of time. No, in '51 that airplane would be at Vineland. I had seen it in the spring. It was in its whole condition.

Mr. Abbott: Yes. And on February 28, 1951, assuming it to be an assembled aircraft, what was its value in its then condition?

The Court: Fair market value for cash.

(Testimony of Douglas Duly.)

Mr. Abbott: Fair market value for cash.

The Court: Fair market value for cash.

The Witness: \$25,000.

The Court: You understand all of these opinions you [109] are asked to express, unless otherwise stated, cover fair market value for cash.

The Witness: Yes, sir.

Q. (By Mr. Abbott): Has your testimony to date as to fair market value been based on the assumptions described by the court, Mr. Duly?

A. Yes.

Q. In testifying to date as to fair market value, you have been referring to the fair market value in a transaction for cash? A. Absolutely, yes.

Q. What in your opinion was the addition to fair market value, if anything, caused by the work on the aircraft described which was narrated in Mr. Krakrup's testimony?

A. The work done by Mr. Krakrup would enhance the value of it—laying as a dormant airplane, it would be less valuable than one that was put in flying condition. It would be—it has no value as a flying airplane until that work was done. Therefore, the value of February, '51, would be \$25,000 as a flyable airplane; considerably less as a school classroom.

The Court: Did I understand you to say the fair market cash value on February 28, 1951, was \$25,000? Now, according to my notes, this work was done seven months later, September, October of 1951. Were you assuming that the work was

(Testimony of Douglas Duly.)

done [110] prior to February 28, 1951, when you expressed that opinion?

The Witness: In February, '51, the airplane was dormant as a classroom article.

The Court: All right. Now, you are asked how much Mr. Krakrup's work on it, the work he described, and the work which was done prior to October 26, 1951, how much, if anything, did that add to the fair cash market value?

The Witness: Well, I would wish to be corrected. When an airplane is put in an airworthy flyable condition, that has greater value than an airplane that has been dormant for six years.

The Court: That is what you are saying? As I understand, at the end of February when it was dormant, it was worth \$25,000.

The Witness: I wish to be corrected. Upon the completion of Mr. Krakrup's work it would be worth approximately \$25,000.

The Court: At the end of February, 1951, February 28, 1951, before any of this work had been done, what in your opinion was the fair market value for cash of the assembled plane?

The Witness: Using information I have on hand from bidding that went on——

The Court: Assuming the condition of the plane as you knew it to be. [111]

The Witness: An airplane in similar condition——

The Court: You weren't asked that. You were

(Testimony of Douglas Duly.)

asked to give an opinion. You aren't asked to think out loud how you arrive at your opinion.

Do you have an opinion as to the fair market value for cash on the 28th day of February, 1951? Yes or no?

The Witness: Yes.

The Court: State the opinion.

The Witness: Between \$20,000 and \$25,000; less than \$25,000.

The Court: How much less?

The Witness: \$20,000.

The Court: \$20,000. In other words, Mr. Krakrup's work added \$5,000 to the value, is that your opinion?

The Witness: Yes.

The Court: What is your opinion of the fair market value for cash during the period from February 28, 1951, until the time that that work started on the plane? Did it change? \$20,000 until the work was done?

The Witness: You are asking for a specific plane?

The Court: That's the plane we are talking about, the plane in suit. You understand that?

The Witness: Yes, I do.

The Court: Did the value of it change from the end of February until the work was done on it by Mr. Krakrup? [112]

The Witness: Assuming that the proper release of the airplane was available, that airplane en-

(Testimony of Douglas Duly.)

hances in value. February of 1951, I know of only one airplane available.

The Court: I didn't ask you that. You said at the end of February your opinion was \$20,000. What was it in the middle of March? Still \$20,000?

The Witness: Until that airplane is legally cleared for sale——

The Court: We are assuming it is legally cleared for sale. You can't sell it unless it is, can you?

The Witness: I believe at that time——

The Court: You are thinking about a great many other things. We are talking about an airplane of this type, which was available for sale on the market at that time.

The Witness: This type but not this airplane.

The Court: This particular airplane, yes, or if you want to put it around in another way, an airplane of this type in the same condition in which this was.

The Witness: That is better. \$20,000.

The Court: All the way through?

The Witness: Yes.

The Court: Until the work was done prior to October 26th?

The Witness: Yes.

The Court: So that by the time we arrive at October 26, 1951, it was worth \$25,000?

The Witness: It did go up, because it was in airworthy condition.

The Court: That would be \$25,000?

The Witness: Yes, sir.

(Testimony of Douglas Duly.)

The Court: Does that cover it?

Mr. Abbott: That covers that portion of the testimony. Thank you, your Honor.

Q. (By Mr. Abbott): In answering all the questions I will put to you, please assume a marketable title, and no cloud upon title. Whatever the facts may be, make that assumption in expressing an opinion of market value for cash. In making that assumption, now, would you change any of your testimony as to fair market value at earlier dates, or was that assumption engaged in when you testified as to the earlier [114] dates?

A. There is a period where these airplanes could be obtained——

The Court: You weren't asked that. You are asked and you are giving your answers on this basis: Did you assume a marketable airplane? Was it a marketable type?

The Witness: A marketable type.

The Court: It would have to be, wouldn't it?

The Witness: Yes.

The Court: You can't assume the market value of something for sale which wasn't for sale, can you?

The Witness: There was a period there when the market in '51 on an airplane in this condition was, with no work done on it, would be \$20,000. With work done on it, that is, a fair airplane, it would be \$25,000.

Q. (By Mr. Abbott): In each case are you assuming that the title was clear and that there was

(Testimony of Douglas Duly.)

no cloud on the title which the seller would transfer? A. Yes.

The Court: Mr. Duly, as I understand your testimony, it is—assuming a plane of this type, in the condition in which you observed this plane to be as of July 25, 1946, in your opinion it then had a fair cash market value of \$5,000; is that correct?

The Witness: In 1946? [115]

The Court: Yes.

The Witness: Yes, sir.

The Court: And you assumed, I take it, that the buyer would get a title when he bought it?

The Witness: Yes, your Honor.

The Court: And the seller would be able to deliver a title?

The Witness: In 1946?

The Court: At any time.

The Witness: Yes, your Honor.

Q. (By Mr. Abbott): Do you have an opinion, Mr. Duly, as to the fair rental value of the aircraft described when rented for cash during the period commencing February 28, 1951, and ending February 1, 1953?

A. Now, you are speaking about this particular airplane?

Q. Yes, sir, in the condition in which it was in fact during that period.

A. An airplane in the condition that this was in has no market—no lease value, no rental value until considerable work is done on it, which includes an interior; in general, reconditioning, modification,

(Testimony of Douglas Duly.)

to bring it to CAA specs, which detailed cost depends upon the interior, and could run as high as \$50,000. Therefore, with this airplane unlicensed, there could be no rental. [116]

Q. Now, when you refer to certain work that would have to be done to make the aircraft suitable for the rental market, are you referring to the work necessary to CAA certification for passenger use within the continental United States, Mr. Duly?

A. I am.

Q. And what would be the approximate cost of that work on the aircraft on February 28, 1951, assuming the condition of the aircraft which in fact existed at that time?

A. February, 1951. One expenditure alone has been a standard flat rate price, in complying to CAA spec. 772, of \$23,500. That does not have any interior in the airplane. The airplane would not be suitable for cargo, this particular C-46A airplane. Therefore, another expense, which we flat-rate in putting interiors in, which is seats, lavatories, hostess' buffet, additional windows, reconditioning the engines, which would amount to a total cost of around \$45,000.

The Court: How many passengers would this plane take?

The Witness: It used to be 60, but now it is 50.

The Court: Fifty passengers?

The Witness: Fifty passengers.

The Court: Plus the crew?

The Witness: Plus the crew.

(Testimony of Douglas Duly.)

The Court: Plus a crew of three?

The Witness: Yes. [117]

Q. (By Mr. Abbott): Now, assuming the work you described was done, and that the plane had CAA certification or licensing to fly within the continental United States, what would its fair rental value be during the period commencing February 28, 1951, and ending February 1, 1953. And by rental value, I mean rental value for cash.

A. With the airplane completely ready to——

The Court: He is asking you to assume all that.

The Witness: Okay.

The Court: All you are asked to state is: Do you have an opinion, and if it is in the affirmative, the figure.

The Witness: The normal rent in the industry per month has been \$5,000 a month in that period.

Q. (By Mr. Abbott): Would that be the fair rental value for cash of the particular aircraft described under the assumptions I outlined in my prior question?

A. During that period?

Q. Yes, sir.

A. \$5,000 per month.

Q. What, in your opinion, was the fair market value for cash of the aircraft described on July 3, 1952, the date of commencement of this action?

A. In the condition of the airplane at that time?

Q. In the condition in which it in fact existed at that time, yes, sir. [118]

A. I will have to refer my mind to sales.

The Court: Mr. Duly, we don't want to hear the workings of your mind. You are an expert. All

(Testimony of Douglas Duly.)

you have to do is to state a figure. Don't tell us how you are thinking about it unless you are asked how you are thinking about it.

The Witness: Repeat that date again?

The Court: July 3, 1952.

The Witness: \$30,000.

Mr. Abbott: I have no further questions of this witness at this time, your Honor.

The Court: You may cross-examine.

Cross-Examination

By Mr. Nelson:

Q. Mr. Duly, in your opinion as an expert, you saw the airplane at the Vineland School District in its hull condition, and you are also familiar, are you not, with the provisions of the restrictions that the Government had on school aircraft in 1946?

A. Yes.

The Court: Are you going to ask him if he assumes those restrictions were upon the sale?

Mr. Nelson: No, I realize in the items he has already testified to that he has not assumed those.

The Court: Now, do you wish him to assume those [119] restrictions are on that?

Mr. Nelson: I will, yes.

The Court: Then why don't you say to him: I ask you to assume that if such-and-such restrictions were against it, how would that affect your opinion as to value?

The Witness: In 1946?

Mr. Nelson: Yes.

(Testimony of Douglas Duly.)

The Witness: There were sufficient airplanes on the market for direct purchase from War Assets that school airplanes didn't enter the picture.

The Court: What you are asked to do and what Mr. Nelson wants you to do is—are you familiar with the restrictions upon the sale of those airplanes at that time?

The Witness: In 1946, no.

The Court: Then you will have to ask him to assume them, I guess.

Q. (By Mr. Nelson): Assuming, for the purposes of this question, that an aircraft is in a hull condition——

The Court: That is this aircraft, isn't it?

Mr. Nelson: Yes.

Q. (By Mr. Nelson): That this aircraft is in hull condition at a school district, and was purchased by the school, would there be any market value in 1946 for that aircraft?

A. Yes, all airplanes are saleable.

Q. What would be your opinion as to the approximate [120] value of that aircraft with the restrictions on, and in the hull condition?

A. \$5,000.

The Court: With the restrictions against it?

The Witness: I will have to explain that. In 1946 the airplanes were in Ontario for public sale, and anyone could go out there and buy one.

The Court: You are asked now with respect to this particular plane. You saw this plane.

(Testimony of Douglas Duly.)

The Witness: Well, if there is a restriction, what kind of a restriction, sir?

Mr. Nelson: Whatever restrictions were in existence at the time.

The Court: The witness says he doesn't know them, so you will have to ask him to assume them.

Mr. Nelson: All right.

The Court: To assume this plane he saw up there in the school grounds in the condition it was in when he then observed it, and that any disposition of it was subject to certain restrictions.

Mr. Nelson: Yes, and I believe my question covered that.

Q. (By Mr. Nelson): In hull condition, with any restrictions on it at the same time, would that have the same market value?

The Court: The witness doesn't know, and I interrupt [121] to tell you the witness says he doesn't know what restrictions were on it.

The Witness: In 1946, no.

The Court: So you must ask him to assume what the restrictions were that were on it. I will see if I can help. What were the restrictions you want him to assume?

Mr. Nelson: I might read the restrictions. They are in an exhibit.

The Court: Counsel wants you to assume the plane was on the school ground, as you observed it, and any disposition or sale of it was subject to the following restrictions. Now, if you will read them.

(Testimony of Douglas Duly.)

Mr. Nelson: I will read the restrictions that are set up in one of our exhibits, Form 65.

The Court: He doesn't care where they come from. He is going to assume they are true, wherever they are in this case.

Mr. Nelson: For the purpose of this question I will assume they are true.

The Court: You are asking him to assume it, aren't you?

Mr. Nelson: That is right.

Q. (By Mr. Nelson): That the acquired property when unfit for the above purposes will be sold only as scrap and then only after it has been rendered completely unfit and useless except for its basic material content. Sales [122] consummated within three years of the date of acquisition must have the prior approval of the Disposal Agency, and, also, that the acquired property will not be used for any flight purposes.

With those restrictions on the aircraft, and the aircraft being in the hull condition at the Vine-land School District, what would be your opinion of its fair market value?

Mr. Abbott: Your Honor, I object.

The Court: At what time?

Mr. Nelson: In 1946.

Mr. Abbott: I object.

The Court: As of July 25, 1946?

Mr. Nelson: Yes, your Honor.

Mr. Abbott: I object to the form of the ques-

(Testimony of Douglas Duly.)

tion, your Honor, because I don't understand, perhaps counsel does, what "hull condition" means.

The Court: Well, you mean the condition in which this witness observed it?

Mr. Nelson: He was using the term. The witness has used the term, "hull condition."

The Witness: You jumped from 1946 to 1949, I think.

The Court: At July 25, 1946.

The Witness: Reading those restrictions there, I am no mental process man, reading those restrictions there, it is [123] so much a pound.

The Court: Do you have an opinion as to what was the fair market value of the plane in the condition in which you observed it, subject to the restrictions stated, on July 25, 1946? If you have no opinion, you may say so.

The Witness: As I was not in the metal processing division, I have no opinion.

Q. (By Mr. Nelson): Do you also have no opinion as to its fair rental value at that time under the same assumptions?

A. In 1946 there was no such thing as rental value of airplanes.

Mr. Nelson: I have no further questions.

The Court: Any further cross-examination?

Mr. Blackman: I have, your Honor. Will your Honor permit me to go ahead now?

The Court: Yes, I want to finish with this witness.

(Testimony of Douglas Duly.)

Cross-Examination

By Mr. Blackman:

Q. Mr. Duly, you stated that this type airplane——

The Court: Don't review his testimony. We all remember what he said. Just ask him questions, Mr. Blackman.

Q. (By Mr. Blackman): That value of \$5,000 that you said these airplanes had in 1947 and 1948, they were purchased from [124] War Assets?

A. Yes, sir.

Q. Were they in approximately the same condition as the airplane that you saw at the Sunset School in 1950?

The Court: The Sunset School is the Vineland School District?

Mr. Blackman: Yes, your Honor.

The Witness: Except for minor work to put the airplanes in the air, they would be in similar condition as a rule. [125]

Q. (By Mr. Blackman): Do you know of any that were purchased for any more or less than the \$5,000 figure you have given us, at that particular time? A. No, sir.

Q. All that you know of that were purchased from War Assets went for about the \$5,000 figure at that time?

A. They were on the market for 25,000 and there were no bidders, and War Assets reduced the

(Testimony of Douglas Duly.)

price to five, and several were bought and several were brought to Lockheed Air Terminal for \$5,000.

Q. And the resale of them to these buyers in South America for \$8,500 that you have told us about, was that after work had been done on them after they were purchased from War Assets?

A. No, that would be as is. There was very little work done on them.

Q. What was there, from the value you placed on them at that time to the value that you placed on them in 1951, that changed their value up to the \$20,000 or \$25,000 figure?

A. Supply and demand. This was a transport airplane, and the Korean war was in effect, and, naturally, airplanes were scarce, and the value went up. Although no work was done on the airplane, the actual value went up.

The Court: When, in your opinion, did the airplane in question here come to be worth more than \$5,000, substantially [126] more than \$5,000? At the outbreak of the Korean war?

The Witness: No, it took, I believe six months to generate interest in that type airplane.

The Court: That would be about the end of 1950, would it?

The Witness: Yes, your Honor.

Q. (By Mr. Blackman): Now, have you ever bought any school airplanes in the past 12 months?

A. No, I haven't.

Q. Have you ever bid on any?

A. No, I haven't.

(Testimony of Douglas Duly.)

Q. Did you ever bid on one at Lancaster?

A. No, I didn't.

Q. Have you ever known of any being offered for sale, school airplanes?

A. Oh, yes, I have. I am on the G.S.A. mailing list and I get all their notices to bid.

The Court: G.S.A. is what?

The Witness: General Service Administration.

Q. (By Mr. Blackman): And is that part of your business, to purchase them and build them up, and sell them and operate them?

A. A part of my business is to be informed where these airplanes are, and to be there at the time of bidding, and offer our service to recondition the airplanes; be there [127] where the bidding is opened at the time.

Q. What about the airplane in question here? Prior to the time that it was sold to the Finns, did you ever try to buy it?

A. We bought 18 airplanes on August 12, 1950, from the Air Force in Wright Field. I was the successful bidder for our company, and in October, as I have mentioned before, I went to—a mechanic told me that an airplane was lying there dormant, and I went there and contacted Mr.—

The Court: Went where?

The Witness: Went to Vineland and contacted Mr. Bancroft and gave him my card, asking him to advise me if the airplane was to be sold.

Q. (By Mr. Blackman): That was October, 1950?

(Testimony of Douglas Duly.)

A. Yes. It was approximately three months after we bought these 18 airplanes.

Q. And did you know that the Vineland School District owned it at that time? A. Yes.

Mr. Abbott: I will object, your Honor, as assuming a fact not in evidence.

Mr. Blackman: If it was reputed to be, that is what we are asking.

Mr. Abbott: He is asking what the witness knows.

The Court: Do you wish to modify your question? [128]

Mr. Blackman: Yes, sir.

The Court: Did you know the Vineland School District reputedly and allegedly owned the plane at that time?

The Witness: It was on their property. I assumed that.

The Court: How much did you pay for those airplanes you bought?

The Witness: From Wright Field?

The Court: Yes.

The Witness: The lowest one was \$1,200, and they averaged out \$28,000.

The Court: They averaged out \$28,000?

The Witness: Yes.

The Court: Depending upon their condition?

The Witness: Yes.

The Court: That was free of any restrictions?

The Witness: Yes, directly from the Air Force.

(Testimony of Douglas Duly.)

By the way, they were of a later type, which we shouldn't possibly get into this.

The Court: The individual airplanes ranged in price——

The Witness: From twelve hundred.

The Court: From twelve hundred to what?

The Witness: A little over \$28,000.

Q. (By Mr. Blackman): Those were all a different model, were they not, from the one in suit?

The Court: He just said they were later models. [129]

The Witness: Yes.

Q. (By Mr. Blackman): Later models. Mr. Duly, you say you spoke to the Finns after they told you they had acquired title to the plane?

A. The Finns came to my office and advised me they had an airplane; asked if our company would be willing to give them a bid on the repair.

Q. They asked your company for a bid for the repair of this particular airplane?

A. If we would be interested in it.

Q. When was that, sir?

A. The fall of '51.

Q. And did your company give them such a bid?

A. No, we didn't.

Q. Was there any particular reason why?

A. At that time I was getting inquiries from several other concerns to——

The Court: No. Did they tell you anything?

The Witness: Well, I am leading up to that.

(Testimony of Douglas Duly.)

The Court: You weren't asked to lead up to it. You are just asked if they told you.

The Witness: Will you repeat the question?

The Court: Please read the question.

(The question was read.)

The Court: Are you asking him for his reasons or their [130] reasons?

Mr. Blackman: Why he didn't give the Finns a bid in response to their request for a bid.

The Court: I am sorry. I misunderstood the question myself. He was correct.

The Witness: I didn't believe their bid was in earnest, because I had been getting calls from other concerns asking if I would—if our engineering department would furnish information on the licensing of this airplane. I didn't pursue the effort further. [131]

Q. Other concerns who asked you for a price on licensing the same airplane?

A. Slick Airways and our company are the only companies presently able to license this airplane, therefore, naturally, we were contacted—I shall tell you the firms, if you want. Southern California Aircraft Company in Ontario, contacted me. Grand Central Aircraft contacted me if I would supply engineering information to work on the so-called Finn airplane.

Q. Where was the airplane at that time, if you know?

(Testimony of Douglas Duly.)

A. Evidently it wasn't at Lockheed Air Terminal. I never seen it—wasn't on our airport.

Q. Did the Finns tell you they owned it?

A. Yes.

Q. Did they show you a registration certificate, on it? A. No.

Q. In any event, your company didn't do any of the work on it, is that right? A. No.

Q. Is your company in the same general type of business as International Airports, Inc.?

A. Yes, it is.

Mr. Blackman: We have no further questions.

The Court: Any further cross-examination of Mr. Duly?

Any redirect? [132]

Mr. Abbott: I will be very brief, your Honor.

Redirect Examination

By Mr. Abbott:

Q. In response to certain questions from the court, Mr. Duly, you indicated some confusion or lack of knowledge on the question of restrictions on the aircraft in suit in the year 1946.

Now, are you presently aware of restrictions upon aircraft disposed of by delivery to schools pursuant to the Heddlestone program shortly after World War II? A. Yes, I am.

Mr. Blackman: To which we object as being incompetent, irrelevant and immaterial.

The Court: Sustained. The answer will be stricken.

(Testimony of Douglas Duly.)

Q. (By Mr. Abbott): When did you first become aware, if you are aware, of any restrictions imposed upon the use or sale of aircraft delivered to school districts by the United States, Mr. Duly?

Mr. Blackman: Same objection.

The Court: Sustained.

Mr. Abbott: May I explain my purpose for this line of inquiry?

The Court: You may.

Mr. Abbott: Counsel has just gone into the matter with [133] the witness, apparently in an endeavor to lay the foundation for matters which he will bring out in the course of his case, and I believe the witness gave an answer which was somewhat ambiguous.

The Court: What answer did he give which you think was ambiguous?

Mr. Abbott: Something to the effect, these are not the exact words, he did not know of the restrictions in 1946.

The Court: He said he wasn't familiar, as I understood, with the restrictions which existed in 1946, is that correct?

The Witness: Yes, sir.

The Court: Now, whether he knows about them since, or whether there were any—he is asked as an expert witness to assume certain restrictions did exist, and he predicated his answer upon that assumption. What more is there? He is an expert.

Mr. Abbott: I wish merely to ascertain when, if and at what time he became aware of such—

(Testimony of Douglas Duly.)

The Court: There were some restrictions?

Mr. Abbott: That there were some restrictions, yes.

The Court: Very well. You may answer that. Without regard to what they were.

Mr. Abbott: Yes.

The Court: When did you first learn, if you did, there [134] were some restrictions upon the sale of aircraft or disposal of them, or use of them, aircraft such as the aircraft here in suit?

The Witness: In 1950 when I was at Wright Field.

The Court: Is that when you first learned?

The Witness: Yes.

The Court: You have answered the question.

Q. (By Mr. Abbott): Did the defendants Finn ask to borrow money upon the strength of the title which they claimed to have when they talked with you in 1950 or 1951? A. No, sir.

Q. Did they ask for credit at that time?

A. We didn't get that far along, no.

Q. Did any of the other companies in the industry with whom you had been in contact relative to licensing of the aircraft in suit indicate that the defendants Finn had asked for credit or asked to borrow money at that time? A. No.

Q. In the year 1950, was there a common reputation in the industry relative to the restrictions upon sale, use or possession of aircraft delivered to school districts by the United States, pursuant to the Surplus Property Act of 1944?

(Testimony of Douglas Duly.)

A. Yes, there was.

Q. What was that reputation? [135]

A. A clearance had to be obtained from a branch of the Government for clearance of that airplane before it could be sold.

Mr. Abbott: I have no further questions, your Honor.

Mr. Blackman: May I, your Honor?

The Court: Yes, you may. You may proceed.

Recross-Examination

By Mr. Blackman:

Q. Mr. Duly, you stated that in 1950 you first learned about these restrictions while you were back at Wright Field, is that right?

A. Yes, sir.

Q. All right. And by the way, what month in 1950 was that?

A. I submitted my bid August 12, 1950.

Q. Prior to the time you went back to Wright field in connection with this bid of yours in August, 1950, did you know about any restrictions on the use of school airplanes?

A. It was general—to this extent: the airplane had two values, so much to a school and so much to the individual, in 1946.

Q. I didn't ask you that, sir.

A. There was——

Q. Let me go over it again. You first learned about [136] restrictions on these type aircraft when

(Testimony of Douglas Duly.)

you went back to Wright Field in August, 1950, is that right, sir?

A. Officially. Unofficially, we knew there was some restrictions prior to that. Officially, I heard it from Wright Field. I didn't see any document. I have seen documents since then.

Q. Have you ever seen any document on it to this day? A. Yes, I have, sir.

Q. When was the first time?

A. I proceeded to Washington in August of 1950, and saw documents there.

Q. In 1950. What document did you see on this matter?

The Court: What matter?

The Witness: Restrictions.

Mr. Blackman: The restrictions.

The Witness: A type of form that was made out—I had not in my mind a clear idea of the airplanes sold one time, and then a restriction—I was interested in that restriction and I read it. It has been read in court here today.

Q. (By Mr. Blackman): As you read it, was it substantially the same as Mr. Nelson read it to you a little while ago?

A. I believe Mr. Abbott read it.

Q. Well, whoever it was, one of those other gentlemen, as they read it in court. [137]

A. Yes.

Q. And you say that is the first official notice that it——

(Testimony of Douglas Duly.)

A. First official notice that I read with my own eyes, yes.

Q. Now, prior to that time was there any common reputation in the industry that there were restrictions such as you have heard read to you in court today——

A. On school airplanes?

Q. ——on any airplane owned by a school district, or school?

A. It was common knowledge, sir.

Q. Do you know Mr. Batchelor, who is here in court?

A. Yes, I know Mr. Batchelor.

Q. Over what period of time have you known him?

A. Seven years, approximately.

Q. And during that time have you had many conversations with him?

A. Yes.

Q. And your company is in competition to International Airports, Inc.?

A. Very much so.

Q. This is a highly competitive industry, is it?

A. Yes, it is.

Q. And during this period of seven years and many [138] conversations, have you ever had, with Mr. Batchelor—let's limit this to before the date of this suit, which was July 3, 1952—in other words, during this period of five years ending July 3, 1952, have you ever discussed this matter of restrictions on school airplanes with Mr. Batchelor?

A. No, sir.

Mr. Abbott: We object to this. This is highly irrelevant and immaterial. We can hardly expect Mr. Batchelor would tell the world. It would inure to his——

(Testimony of Douglas Duly.)

The Court: You needn't argue the matter. His answer is in. It may stand.

Mr. Blackman: All right.

Q. (By Mr. Blackman): Did you ever discuss them with anybody at International Airports, Inc.?

A. No.

Q. But you say that you had been over to International Airports several times even after the Finn airplane came down to Burbank and was in International's possession, isn't that true?

A. I have been in their hangars, in and out, for five years, of that part there.

Q. And you were in the Finn airplane three or four times while you were down there?

A. Yes.

The Court: By the "Finn airplane," are you referring to [139] the airplane in suit?

Mr. Backman: Yes, your Honor. Yes, I will refer to it as the airplane in suit.

The Court: Otherwise, you are getting this problem of assuming facts not in evidence.

Mr. Blackman: All right, your Honor. I am glad that you raised the question.

Q. (By Mr. Blackman): Did you speak to anyone at International Airports, Inc., regarding a question of restriction on the use of the airplane during the period you were down there through the airplane? A. No, I didn't.

Q. And yet you say at that particular time you knew that there had been restrictions on school airplanes?

(Testimony of Douglas Duly.)

A. I assumed that they had the proper title or the airplane wouldn't be there. I didn't go into it further.

Q. What made you make that assumption, Mr. Duly?

A. The airplane—I seen it in Bakersfield and after that it was in Burbank. Evidently some possession had been constituted, or the airplane wouldn't have——

Q. That fact, to your mind, being an expert in this field, led you to believe that they had proper title, is that right?

A. Not from reading that document—I don't know what went on in the transaction. Not from reading the document [140] in Washington did I know what transpired. I didn't ask.

Q. My question was simply this, what made you assume they had proper title when you saw it at Vineland at one time and then saw it at Burbank on the next occasion?

A. I never assumed they had proper title.

Q. Isn't that what you stated just a few moments ago?

A. No.

Q. What did you assume when you saw it at Burbank and went through it several times?

A. That the Finn boys had contacted our shop to do the work and come back and got it, and that was it.

Q. What did you assume with respect to title on the airplane when you saw it at Burbank and went through it?

(Testimony of Douglas Duly.)

A. Would probably check that if it came to my shop; and it wasn't in my shop.

The Court: Did you make any assumption with respect to that? If you did, what assumption did you make?

The Witness: I made no assumptions.

Q. (By Mr. Blackman): Made no assumptions at all. Did you ever, knowing what you state that you knew at that time regarding title, did you ever consider that it was worth passing a comment to Mr. Batchelor here regarding these restrictions, asking him whether the restrictions had been lifted?

A. I had no knowledge of the restrictions being lifted. [141] I did not delve into another man's business in that respect.

Q. You were on very friendly terms with Mr. Batchelor during that time?

A. What do you mean by "friendly terms"?

Q. Well, were you on friendly terms?

A. I am a competitor of his.

Q. Does that mean you were on unfriendly terms?

A. Many, many times; I mean competitively, yes.

Q. Mr. Duly, I want to ask you two questions along this matter of common reputation which you have stated. What does that mean to you? What is "common reputation"? You hear it from everybody that you speak to in the industry?

A. Common reputation of an individual?

Q. No; with respect to restrictions. I want to

(Testimony of Douglas Duly.)

know whether you assume the same thing as possibly Mr. Abbott assumed. Did you hear this matter of restrictions on school airplanes from every individual you spoke to in this industry?

A. It was general knowledge that there must be clearance given to a school airplane.

Q. Well, you have used that word "general" knowledge, and that doesn't help me any more than "common reputation."

To your own recollection, with respect to this period in 1950 and 1951, did you have conversations with other people in the aircraft industry wherein the subject of restrictions in the use of school aircraft, let's call them [142] school aircraft, was discussed between you?

A. In our own organization, yes.

Q. In your own organization, meaning in the Flying Tiger Line? A. Yes.

Q. All right. By that answer I will assume that you didn't with respect to any other organizations.

A. Slick Airways, another competitor. Their man has a similar job as mine, and we could have discussed this, yes.

Q. Slick Airways, either now or within the last six months, at one time was merged with the Tiger Line?

A. No. Attempts were made, but never was official.

Q. All right. Anybody else? A. No.

Q. So that your conception of common reputation lies from what you discussed in your own or-

(Testimony of Douglas Duly.)

ganization and what you discussed with possibly one or a few men at Slick Airways, is that right? You can answer that yes or no.

A. That I went around knocking on doors asking if—it was common knowledge. Who would say it, whether a pilot or mechanic, that there was a restriction on school airplanes,—that was common knowledge. I don't go around asking people that. I am repeating, it is common knowledge. Who originated it on the West Coast, I can't determine it.

Q. Mr. Duly, you didn't discuss the matter with anyone [143] else outside of your own organization, excepting Slick Airways, is that right?

A. We being the largest users of the airplanes, naturally—that was, we had knowledge of that fact. But as far as discussing it with other people, it wasn't necessary; it wasn't part of our business.

Q. And you didn't do it? A. No.

Mr. Blackman: That is all.

Mr. Nelson: Two questions, your Honor.

Q. (By Mr. Nelson): Mr. Duly, you indicated in 1950 that you did go back to Washington and review documents concerning these restrictions on schools. Have you determined at this time whether or not a school district can sell an aircraft after a three-year period? [144]

Mr. Abbott: Objection, your Honor. That calls for a conclusion of law, not within the province of the witness.

The Court: Sustained.

(Testimony of Douglas Duly.)

Q. (By Mr. Nelson): Mr. Duly, at the present time do you know how to obtain an aircraft from a school district and obtain clear title to it?

Mr. Abbott: The same objection, your Honor.

Mr. Nelson: This man is an expert.

The Court: It is immaterial.

Mr. Abbott: And it is not only a conclusion of law, it is irrelevant and immaterial.

The Court: If you want to ask him about where he goes, and who he sees, and some facts, that is one thing, but to ask him a question of law, he might be able to decide the case for me on that basis.

Mr. Nelson: This gentleman is probably the only one who has gone to Washington and made some sort of a determination. I understand that he has purchased school aircraft. Is that true?

The Witness: No, I have not.

Mr. Nelson: Then that answers my question.

The Court: All right. Anything further from Mr. Duly?

Mr. Abbott: No, your Honor.

The Court: Step down. We will take the recess until tomorrow morning. [145]

Mr. Blackman: Your Honor, one more question from the witness on the basis of the information given.

The Court: Very well.

(Testimony of Douglas Duly.)

Recross-Examination

By Mr. Blackman:

Q. Mr. Duly, we spoke about whether or not you bid on any school airplanes. You said that you did not, is that right? A. That's right.

Q. Did you attend a sale at Lancaster of a school airplane? A. Not at Lancaster; at Muroc.

Q. At Muroc? A. Yes.

Q. You did attend such a sale? A. Yes.

Q. When was that, sir?

A. January of this year, I believe.

Q. Pardon? A. January of 1954.

Q. Just this last January? A. Yes.

Q. And what was your purpose in attending the sale?

A. As I have attended many sales, to be on hand when [146] that airplane would be awarded to a party, to offer my services to recondition it.

Q. Didn't you bid on that airplane in the name of someone else? A. No, sir.

Q. Do you know a Mr. Lee Cameron?

A. Yes, I know Mr. Lee Cameron.

Q. Did you have anything to do with Mr. Lee Cameron, in connection with that Lancaster sale, or that Muroc sale?

A. No, in the extent that I was there, and I don't know whether he was there or not. I was there in April when the airplane was offered again, and Mr. Batchelor was there.

(Testimony of Douglas Duly.)

Q. And you had absolutely no interest either for yourself or for anybody else as to who got that airplane that was sold at Muroc?

A. No, sir. For reconditioning, I would want to be there to put my bid in to encourage the customer——

Q. You would have been glad to recondition it for whoever bought it; is that right?

A. Yes, sir.

Mr. Blackman: That is all.

Mr. Abbott: I have one more question.

The Court: This must stop sometime, gentlemen.

Mr. Abbott: A new matter has been reopened on counsel's last examination. [147]

The Court: Proceed. One question.

Redirect Examination

By Mr. Abbott:

Q. Was that a sale conducted under the auspices of the General Services Administration, with the proceeds payable to the Treasury of the United States, Mr. Duly?

A. The sale of the airplane in Lancaster in April?

Q. Yes. A. Yes, it was.

Mr. Abbott: No further questions, your Honor.

The Court: All right. Mr. Duly, you may step down. You are excused.

(Witness excused.)

The Court: Is there any objection on the part of any member of the jury to reconvene tomorrow morning at 9:30? If not, we will reconvene at that time.

Before we separate, members of the jury, I would admonish you again of your duty not to converse or otherwise communicate among yourselves, or with anyone else, upon any subject touching the merits of this trial, and not to form or to express an opinion on the case until after it has been finally submitted to you for your verdict.

You are now excused until tomorrow morning at 9:30.

(Thereupon the jury retired from the courtroom.) [148]

The Court: Is it stipulated, gentlemen, that the jury have retired from the courtroom?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: How much longer will the Government's case be?

Mr. Abbott: I anticipate only half an hour to an hour further, your Honor.

The Court: Do you have something, Mr. Blackman?

Mr. Blackman: Yes, your Honor. I was going to ask whether or not the Finns intend to be present tomorrow, because they will be a part of our case.

The Court: If you wish to call them as witnesses, you may.

Mr. Blackman: And may they be instructed to return?

The Court: They are instructed to return as witnesses, not as parties.

Mr. Blackman: As witnesses.

The Court: Tomorrow morning at 9:30. Anything further?

Mr. Abbott: Nothing further.

The Court: The court is recessed until tomorrow morning at 9:30 a.m.

(Whereupon, at 5:55 o'clock p.m., Wednesday, October 27, 1954, an adjournment was taken until 9:30 o'clock a.m., Thursday, October 28, 1954.) [149]

October 28, 1954; 9:30 A.M.

The Court: Cause on trial. Is it stipulated, gentlemen, the jurors are present?

Mr. Abbott: So stipulated.

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: The record will so show. You may call the Government's next witness.

Mr. George C. Finn: Your Honor, may I make a statement for the record with respect to a letter which I received from the Assistant Attorney General?

The Court: No, not at this time. The Government is putting on its case. That is, unless it has to do with some witness.

Mr. George C. Finn: It has to do, your Honor, with a jury trial.

The Court: No, we have settled that.

Mr. Charles Finn: We would like to submit, your Honor——

The Court: You may file the letter with the clerk, if you like, but we are not going to interrupt the trial to talk about a jury trial. The jury is sitting in the box.

Proceed, Mr. Abbott.

Mr. Charles C. Finn: There is one point I wanted to bring up. [153]

The Court: Proceed.

Mr. Abbott: May it please the court: The remaining matters in the Government's prima facie case are matters of stipulation. The record of the pretrial conference has been marked by the Government, and we have the stipulations there. Since most of those stipulations relate to formal matters, and matters which are not in issue, with the court's permission I will not take the time of the jury to read them now, but will request permission to read whatever stipulations are pertinent to the matters submitted to the jury, and will leave that matter to the final argument.

The Court: It seems to me it would be better if you would reduce them to a written document, and have all the parties sign.

Mr. Abbott: I question, your Honor, whether all of the parties will sign any document to be submitted at this point.

The Court: If their stipulations were made at

the pretrial hearing, they will be deemed signed, whether they sign them or not. The parties are bound by the stipulations made at the pretrial hearing, whether they feel they are bound today or not. You may proceed as you choose.

Mr. Abbott: May it be understood, however, that those stipulations are before the court, and may be read to the jury to the extent they are pertinent at the time of final argument. [154]

The Court: You are referring to the record in the pretrial proceedings?

Mr. Abbott: I am, your Honor.

The Court: There are three volumes, pages 1 to 190, 191 to 253, and 254 to 348.

Mr. Abbott: Yes, sir, there are. For further identification, the dates are Thursday, October 14; Friday, October 15; and Monday, October 18th, of 1954.

The Court: Very well. The Government now rests?

Mr. Abbott: The remaining matters outlined by the Government in its opening statement are matters of rebuttal, your Honor. This concludes the Government's prima facie case, and we rest.

The Court: Does the Vineland School District or does the defendant Bancroft wish to proceed at this time?

Mr. Nelson: Yes, your Honor. We desire at this time, your Honor, on behalf of Peter A. Bancroft to move the court that the action of the Government against Mr. Bancroft of inducement of the breach of the Form 65 agreement be dismissed,

inasmuch as the Government has not shown one iota of evidence whatsoever that Mr. Bancroft induced a breach of this Form 65 agreement, and they haven't presented any evidence whatever that he intended to do so, which is the basic element of this action, and, in fact, when they placed Mr. Bancroft on the stand, they elicited evidence to the contrary, and that is, [155] that when he released the aircraft to the defendants Finn, he believed that they had the consent from Washington. That, also, they have not shown that, as an agent of the District, he was not privileged to induce the District to breach the contract, if they so desired, and I believe that in our memorandum of authorities we have shown that he could not do that, even if he was malicious in doing so, as an agent of the District.

The Court: Does the Government oppose the motion?

Mr. Nelson: I might state one more ground for the record.

The Court: I thought you had finished your grounds. Complete your statement.

Mr. Nelson: And that is that the Government has not shown that Peter A. Bancroft was the proximate cause of any breach, if any breach occurred; that the proximate cause, if any, was shown to be the defendants Finn. [156]

Mr. Abbott: Your Honor, the motion made by Mr. Nelson is well taken. However, the Government does ask leave to amend to conform to proof to show a conversion by Mr. Bancroft. Actually, the essential elements of that cause of action appear

in the complaint and the amended complaint, although not expressly so denominated, and it is upon that theory, and no other, that the Government will proceed against Mr. Bancroft.

The Court: As a converter?

Mr. Abbott: As a converter of the C-46A aircraft in suit. The evidence has shown Mr. Bancroft signed the bill of sale, that he delivered possession of the aircraft to the defendants Finn. If the Government, as it contends, is entitled to the possession of the aircraft at the time when those events occurred, he has in fact converted Government property.

When I say that the Government requests leave to amend to conform to proof, I simply request we be able to set out a separate cause of action which would more expressly and concisely contain those matters which appear at various points in the amended complaint now on file.

Mr. Nelson: If the court please, we certainly object to amending pleadings at this time to conform to evidence which isn't even before the court; particularly in the middle of an action of this nature. We are obviously surprised, and [157] I believe, prejudiced by the action.

The Court: I shall not rule upon that. I don't understand that to be a motion to amend at this time. Or, is it a motion to amend at this time?

Mr. Abbott: It is a motion to amend at this time, your Honor.

Mr. Nelson: May I also point out, your Honor, that the action which the Government is attempting

to place before the court here also requires an intent to convert, and that certainly the witness indicated already that during the Government's case that he gave possession based upon the Finns' representation that they had obtained these consents, and where on earth can the intent be?

The Court: I will submit the Government's motion at this time and deny defendant Bancroft's motion at this time, without prejudice to a renewal at a later stage in the case.

Mr. Nelson: Am I to understand the inducement action is still before the court?

The Court: Yes.

Mr. Nelson: If the court please, I have one other motion to present at this time. And that is a motion that the Government's action against the defendant Vineland School District be dismissed.

I do this on two grounds: one, that on the face of the pleadings that are before the court in this action, it can be [158] seen by reading the regulations that govern this Form 65, in which the agreement between the District and the Government was entered, is not in accordance with the regulations. And I wish to point that out to the court at this time.

Regulation 4, which was in effect at the time of this agreement—it went into effect on May 31st of 1946, and the agreement took effect on July 25th of 1946—provided as follows:

“The disposal agency shall establish procedure to which educational institutions or in-

strumentalities may make written application for surplus aeronautical property.”

I wish to point out, your Honor, that I am eliminating the Health Department agency, just limiting it to the educational institutions which are in point.

“Such procedures shall include——”

and we wish to emphasize the word “shall,” which is mandatory——

“one, a certification that the applicant is an educational institution or instrumentality; and two, a certification of the purpose for which the property is to be acquired; and in the case of an aircraft agreement that it will not be flown except for purpose of research or experiment in connection with the science of aircraft; and three——” [159]

And this is the important item——

“agreement that the property will not be resold to others within three years of the date of the purchase without the consent in writing of the disposal agency, unless it is mutilated or otherwise rendered unfit for use, except for scrap.”

In other words, your Honor, Regulation 4, that was in effect at the time of the agreement in this action——

The Court: What was the date of the agreement with the School District?

Mr. Nelson: The date of the agreement, your Honor—let’s see. It was not effective, however,

until July 25th, when the plane was transferred, because that was the consideration that the Government was to give.

The Court: Then the date of it for our purposes is July 25th—of what year?

Mr. Nelson: Yes, your Honor.

The Court: What year?

Mr. Nelson: 1946.

The Court: Your point is that the limitations upon disposing, at the most, is three years, is that it?

Mr. Nelson: Yes, your Honor. And within that three years it could be disposed of even without the consent of the authority if it was determined as unfit, except for scrap. And here, very clearly, the transfer, if there is a transfer [160] to the Finns, occurred more than three years later, and certainly the War Assets Administration Form 65 did not so provide, and the disposal agency does not have the right, under law, of a mandatory provision, to set forth something in an agreement which doesn't exist in the law.

The Court: What does the agreement set forth that is contrary to the statute or the regulation?

Mr. Nelson: Form 65 agreement provides as follows, your Honor——

The Court: That is Exhibit——

Mr. Nelson: That is Plaintiff's Exhibit 1. The pertinent part thereof, as to three years,

“That all acquired property, when unfit for the above purpose, will be sold only as scrap, and

then only after it shall have been rendered completely unfit and useless, except for its basic material content."

We wish to point out there, your Honor, that the agency has attempted to restrict the sale only as scrap, and then only after it has been reduced to its basic material content, when the regulation merely said it could be sold as scrap if they found it useless.

"Then sales consummated within three years of the date of acquisition must have prior approval of the disposal agency." [161]

Well, what about sales after the three-year period that we have in this situation? The regulation would never have put the three-year period and said not to be sold within three years if they don't mean after three years it could be sold; and there are no restrictions whatsoever.

And those things appear on the face of the pleadings before the court, your Honor, and we feel the Government's action should be dismissed on that point, at this time, alone; that they have not proved a prima facie case, and the School District had a right to do as it pleased with the aircraft.

I have one other, and that is the phase of illegality. If the Government would like to argue this point of the agreement first, and clear that phase up, I will take up the illegality second; whichever seems to be convenient for the court and the Government.

The Court: You mean the contention that the arrangement was beyond the authority of the district?

Mr. Nelson: Yes.

The Court: You may make that point. I don't care to hear argument on that at this time.

Mr. Nelson: All right. The second point of the motion to dismiss this morning against the Government is this matter that the pleadings show on their face that the School District, when it entered into this agreement with the defendants Finn, acted beyond the scope of their authority. It does not appear [162] that this action was intentional on their part, but as this court well knows that if the governmental agency acts beyond the scope of its authority, whether they intend to do so or not, it is not a proper act, and is a void agreement; in fact, whatever action they take is void and null, as a public policy matter.

The Court: I take it all these grounds that you urge in support of the motion for dismissal as to the Vineland School District, you would urge in support of your previous motion as to defendant Bancroft?

Mr. Nelson: Yes, I would.

The Court: May it be so understood?

Mr. Abbott: It is so understood, your Honor.

Mr. Nelson: Now, in detail, as to the illegality argument, I wish to point out where they appear on the face of the pleadings.

The Court: That is covered in your brief, isn't it?

Mr. Nelson: Yes, your Honor.

The Court: You don't—

Mr. Nelson: I will refer to the brief in pointing this one of barter and sale in violation of competitive bidding statute, and we submit the motion at this time for Government's argument.

Mr. Blackman: Before counsel replies, so that he may have the opportunity to reply to both, your Honor, may I make [163] a similar motion?

The Court: Do you have a motion? Do you adopt the grounds that have been stated by Mr. Nelson?

Mr. Blackman: I do, your Honor, in making a similar motion on behalf of the defendant International Airports, Inc., and I would like to point out, in addition to the points made by Mr. Nelson, that the current 1946 regulation superseded an earlier 1944 regulation, which contained the same wording as is contained in Government Form 65 agreement. Yet when the regulation was changed the contract was never changed, and we submit that the contract, by purporting to adopt the wording in an earlier regulation superseded by duly constituting authority, was to that extent invalid.

We would also adopt the grounds stated by Mr. Nelson insofar as International is concerned, the Form 65 agreement only purports to recite a covenant which would be binding between the parties; namely, between Vineland and the Government. We don't believe the covenant was valid for the reasons that have been pointed out by Mr. Nelson. But in any event, no way binding upon International

Airports. And we feel that for that reason, as well, the Government has no claim of title to the airplane.

We also would point out that under the 1946 regulation the airplane could only have been disposed of by sale, and the wording in just two very brief lines is very clear on that [164] point. The regulation section 8304.7 states,

“Provided, however, that after June 30, 1946, transport aircraft shall be disposed only by sale.”

This airplane was disposed of July 10, 1946, some 10 days later. It was actually delivered nearly a month later.

The Court: Does the Government oppose the motion?

Mr. Abbott: The Government does, your Honor.

The Court: First, do the defendants Finn wish to make any motion, join in any motion?

Mr. Charles C. Finn: We are not here, your Honor, on the same grounds as before.

The Court: Very well.

Mr. Abbott: The first point raised by counsel, your Honor, in support of the motion is that the Form 65 agreement is one that is in contravention of the applicable regulation. Because it is so important to note several words in that regulation, I will take the liberty of reading a portion of it again, even though counsel has read it.

“The disposal agency shall establish procedure pursuant to which educational and pub-

lie health institutions may make written application for surplus aeronautical property.”

and so forth.

Such procedures shall include—this regulation, your [165] Honor, describes a minimum standard. Nowhere in the regulation, expressly or by implication, can we find any language which even vaguely suggests that an agency cannot go beyond the minimum standard and impose other procedures.

The Court: Your point is that the effect of the regulation, I take it, is that the administrator could not go beyond the regulation, but he could add restrictions to the regulation?

Mr. Abbott: He had to do at least as much as the regulation required.

The Court: But he could add additional restrictions if he felt so advised, but he would have to include in any arrangement the restrictions imposed by the regulation; at least that much?

Mr. Abbott: That is our point, your Honor.

The Court: What about the contention just made by Mr. Blackman that under Section 8304.7 the only disposition authorized of such aircraft at this time was by sale?

Mr. Abbott: That section, your Honor, from its context arrangement and language is obviously a section relating to the commercial disposition of aircraft by War Assets Administration.

As is apparent from the entire statutory organization, there were two primary methods of disposition. One was by commercial sale at commercial

prices. The other was by disposition to educational, and other charitable and public institutions for public purposes at a nominal cost.

The regulation to which Mr. Blackman refers is one which controls the commercial sale only. [167]

I can go a step further, your Honor, and say this: that the Government maintains that the transfer is one which is within the statute and regulations, and, therefore, that whatever purportedly passed by the Form 65, in fact, did pass.

But if we are wrong here, then nothing passed, and the airplane has belonged to the Government, with no interest, possessory or otherwise, in anyone else from 1946 to the present time.

An illegal act by a Government officer, if such a thing occurred here, and we doubt it, would not convey title of any interest whatsoever.

So if counsel wished to urge that the Government officials exceeded their power, he says that the Government has title to the aircraft free and clear of any claim of any person whatsoever.

Mr. Nelson: I would like, your Honor, to answer a couple of the arguments that the Government has presented.

The Court: You may.

Mr. Nelson: I am sorry, Mr. Abbott. I thought you were through.

Mr. Abbott: I was just pausing for a moment.

The Court: I do not expect to decide these questions at this stage of the case, gentlemen.

Mr. Abbott: I might say, your Honor, in that connection [168] that most of these points have

been extensively briefed, and those points which are raised for the first time, either in this argument or in the memorandum of authorities filed by the defendants Vineland or International on Monday of this week, as to those points which are new the Government will request leave to file a brief for the court.

The Court: Can you have it here by this afternoon or tomorrow?

Mr. Abbott: It will be impossible to do it by then, your Honor.

The Court: Very well. I don't expect to pass upon these questions of law at this time.

Mr. Nelson: For the record, your Honor, I would like to present two items in answer.

The Court: You may.

Mr. Nelson: The first item, your Honor, is this matter of: Could the agency add additional restrictions?

I believe that the law is clear that the agencies on occasion can enter into additional matters which are to the benefit of the Government. However, can a disposal agency, or any agency of the Government, take a regulation that is passed, as Mr. Blackman pointed out, in 1944, which said in effect you cannot sell until after the 3-year period, and then that same regulatory body comes along two years later and says, "No, gentlemen, you shall provide in your agreement [169] that if they are resold within the 3-year period, that you are to get consent"?

Isn't that changing the agreement, in telling them that after the 3-year period they can do anything they wish, and can the disposal agency, in view of that second regulation, turn around and continue to use the language of the old regulation?

The Court: That is a question of law.

Mr. Nelson: Yes.

The Court: Of course it may well be that the regulation adds up to this, that prior to that period there could not be a sale under any circumstances except as expressly set forth in the regulations. Later on the conditions of limitation may have been relaxed, and the Government say, "You may go farther, if you like. You may sell, but if you do sell, then you must sell under certain conditions."

Mr. Nelson: Yes.

The Court: Under at least a minimum of certain conditions, and the administrator might have discretion to exact other and further conditions. Those are questions of law that are not easily answered, and I don't expect to answer them definitively now.

Mr. Nelson: I think the court is absolutely right. As a matter of fact, however, we do wish to point out that it wasn't "may." It was a "shall." [170]

The Court: Of course, sometimes "shall" is purely directory. Have you any authorities to show that "shall" means "must," or does it mean "may"?

Mr. Nelson: I am as well aware as the court, sir, that "shall" sometimes may mean "may," but as a general matter it does mean "mandatory."

The Court: There is no question that so far as regulations are concerned, and so far as they are valid and promulgated pursuant to the statute, they have the same effect as the statute, and they are binding upon the Government officials, as well as persons who deal with the Government officials. In my opinion, there is no question on that ground. If the Government official makes regulations and he promulgates them, generally speaking, he is as much bound by them as the public generally is bound by them. They become in effect a part of the statute, if they are valid.

Mr. Nelson: One further point on this matter of these additional restrictions, and this change in 1946. I just wish to call the court's attention, when it is reviewing this matter, to the purposes for which the War Surplus Act was adopted, and that is, basically, to prevent the market from being flooded with these war surplus aircraft, and that in 1944 that was a far more serious problem than it was in 1946. I believe it was the intent of the regulatory body in 1946 in removing the restriction of the sale of these properties [171] after the 3-year period, that they then felt that five years had passed, and a sufficient time had elapsed so that these aircraft could then go on the market.

One further thing as to this agreement saying, if you so find, that this agreement is invalid, that it is therefore thrown out and the aircraft has not transferred.

The court is well aware of the rule, I am sure, that if a part of an agreement should fail, that that

does not invalidate the entire agreement; that the agreement can be read in accordance with the regulations as to those parts which do fail, and the aircraft still passes to the District, only instead of the manner in which it states in the agreement, in accordance with the law in effect.

Mr. Blackman: Before the Government replies, just to follow our usual continuity, may I add a word?

The Court: If you feel you should.

Mr. Blackman: I will make it very brief. The Government has stated that in reviewing the context of the regulation counsel feels that, in his opinion, Section 8304.7, which is that which requires the disposal by sale only after June 30, 1946, does not apply to schools. We submit that there is nothing to be found in that section that limits it to commercial disposal.

The Court: That is all covered in your brief, isn't it?

Mr. Blackman: We haven't made that statement, your [172] Honor, as I have just put it to you there, but we have raised the point regarding the applicability of that section to this transaction.

The Court: Your statement is now that there is nothing anywhere to indicate that Section 8304.7 is applicable only to commercial sales?

Mr. Blackman: Yes, your Honor, that is right; and adding to what Mr. Nelson has just said, we are confident that the court also will take into consideration some of the other expressed objectives of Congress in enacting the Surplus Property Act of

1944, two of which directly apply here and are as follows:

“to dispose of surplus property as promptly as feasible * * *”

Then I am leaving out one clause, or I can read it all:

“without fostering monopoly or restraint of trade, or unduly disturbing the economy, or encouraging hoarding of such property, and to facilitate prompt redistribution of such property to consumers.”

Obviously, the resale of property was contemplated by the Congress. Next:

“to dispose of surplus Government-owned transportation facilities”—and an airplane would obviously be one—“and equipment in such manner as to promote an adequate and economical national [173] transportation system.”

We feel that those are two objectives which Congress has written into this Act, which belong in a fair consideration of the merits of this case.

The Court: Do you find anything in the regulatory scheme such as Mr. Abbott suggested, that there are two different plans or there were two different plans formulated by the Administrator, and one deals with educational and like institutions, and the other commercial transactions?

Mr. Blackman: Your Honor, answering that, candidly, I do.

However, I would like to go on and explain that I find that the regulations are set up as a unit, with one section out of that unit devoted to disposal to educational institutions.

Now, that one section is written into the regulations, but nowhere does it attempt to negative any of the other regulations that are also written into the same Regulation No. 4, and since it followed the 1944 regulation and changed the express wording of the 1944 regulation with respect to disposal, then we assume the Board, in promulgating that regulation, had in mind the change in the regulation, which was limited, just the same as it did this Form 65, Plaintiff's Exhibit 1. The thing is that somebody overlooked it and didn't change it. [174]

Mr. Abbott: Some serious statements are made by counsel that I think require an immediate answer.

First, this question of arrangement of the regulation. I appreciate that it is difficult for the court to follow the matter if the court does not have a full copy of the regulation before it, and I have but one copy here now, but the regulation is reprinted in the Federal Register, and may be viewed there in its entirety.

The entire regulation on the subject of disposal of aircraft, and components, and parts of aircraft is entitled "Part 8304." Each of the subsections is a decimal division of 8304. That is, we have 8304.1, 8304.2, and so on.

The regulation, when read in its entirety, is obviously a regulation which provides for two

separate types of disposal. One for commercial sale, and the other by disposal for educational and public health purposes.

On the first topic we have Section 8304.7, the section to which counsel has referred, which is entitled, "Disposal of Transport Aircraft," and I think it helps to read that regulation in full rather than just the small portion of it that has been quoted by counsel:

"In the disposal of transport aircraft, the disposal agencies shall establish, with the approval of the Administrator fixed prices for such aircraft. In fixing such prices, the disposal agency [175] should give consideration to the potential earning power of the aircraft in relation to other matters, its estimated economical life in scheduled and non-scheduled commercial service, the degree of modification required for conversion to civilian use and the relationship between supply and demand. If the disposal agency determines that transport aircraft are beyond economical repair or that a fixed price cannot be readily established because of obsolescence, specialized design or other exceptional circumstances, such aircraft may be disposed of by competitive bidding or other method of sale considered appropriate by the disposal agency. The disposal agencies shall attempt, whenever practicable, to dispose of surplus transport type aircraft by sale rather than by lease. Transport aircraft of models

approved by the Administrator, may, however, be leased by the disposal agency upon terms approved by the Administrator”—and now the language to which counsel referred—“Provided, however, That after June 30, 1946, transport aircraft shall be disposed of only by sale.”

That is an entire reading of the entire text of Section 8304.7.

There are subsequent sections dealing solely with commercial [176] disposition, and then there is a section having equal dignity with 8304.7, and entirely separate from it. That is Section 8304.11, entitled, “Disposals for Educational and Public Health Purposes.” Here we find an entirely different set of criteria for agency determination of the manner of disposition. The section reads, commencing with the beginning of the text:

“Where the disposal agency determines that any item of surplus aeronautical property is commercially unsalable”——

And I will just stop to refer to the definition of that term in Section 8304.1, Subsection 2:

“ ‘Commercially unsalable property’ as used herein is distinguished from property of no commercial value as used in Part 8319¹ and means property which has no reasonable prospect of sale at or above a minimum price established by the disposal agency, or where such minimum price has not been established, no

reasonable prospect of sale except as salvage or scrap.”

Now, going ahead with Section 8304.11:

“Where the disposal agency determines that any item of surplus aeronautical property is commercially unsalable, disposal may be made to educational or public-health institutions or instrumentalities [177] as provided in this section. The disposal agency shall compile a list of such items and shall ascertain fixed prices which will reflect the benefit which has accrued or may accrue to the United States from the use of such property by educational or public-health institutions or instrumentalities. Such lists shall be submitted to the Administrator, and if approved, will be published by order hereunder. The disposal agency is authorized to dispose of such property to educational or public-health institutions or instrumentalities at the prices so approved: Provided, however, That no such disposals at the prices so approved may be allowed to any nonprofit institutions which are not exempt from taxation under Section 101 of the Internal Revenue Code.”

The sections themselves are, with other provisions which have been previously discussed in this argument, provisions for the minimum disposal procedures, certification, and agreement with the——

The Court: What does “disposal” mean? Sale?

Mr. Abbott: The disposal would mean, your

Honor, whatever the Administrator acting within the regulations in the statute wanted to make it.

The Court: But this Exhibit 1 here states, "In consideration [178] of the transfer to Vineland School District, the Vineland District agrees as follows." What is that? A bill of sale to the airplane, with some subsequent conditions attached to it?

Mr. Abbott: As a matter of fact, Plaintiff's Exhibit 1 does not describe any particular property, of course. It is an agreement, by its express terms, which was applicable to all subsequent transfers to the school district.

The Court: What are "transfers," first?

Mr. Abbott: In this case probably bailment is the best definition.

The Court: A transfer usually imports the transfer of title, doesn't it? "Transfer" is usually an all-inclusive term.

Mr. Abbott: I take it, your Honor, the term "transfer" can mean as little or as much of the total bundle of sticks which constitute ownership, as is indicated by the tenor of the entire document in which it appears.

One could transfer a life estate in property, one can transfer a leasehold in property, one can transfer a right to use property for a short time.

The Court: You don't use the verb "transfer" in connection with leases, do you?

Mr. Abbott: One might transfer a leasehold interest, your Honor. [179]

The Court: Yes, once the leasehold is created,

but the creation of a leasehold interest is usually not referred to as a transfer.

Mr. Abbott: I think this point is clarified, your Honor, by the only other instrument relating to the nature of the interest transferred, which is the "Release of Custody" form, Plaintiff's Exhibit 4. That form by its very title——

The Court: Let me see it, Mr. Clerk.

(The document was handed to the court.)

The Court: Even a grant of real property is included within the term "transfer," isn't it? It has been for centuries, hasn't it? The old common law deeds of land are referred to as transfers, are they not?

Mr. Abbott: Surely, a deed of a fee simple estate is a transfer, but the term "transfer" would also encompass a number of other more limited interests.

The Court: Yes. But we don't usually refer to a lease as being a transfer, do we? Or the creation of the indenture itself as being a transfer?

Mr. Abbott: Whatever ambiguity that term might introduce into the relationship is clarified by Plaintiff's Exhibit 4, your Honor.

What was executed by the Government when the school district took possession of the aircraft? Was it a bill of sale? No, it was a form entitled, "Release of Custody of the [180] Aircraft," and that is all, and all that appears on that form is language of transfer of possession.

The Court: How does that clarify anything? It seems to me that might make it more ambiguous.

Mr. Abbott: Form 65, your Honor, could not be a bill of sale, could not be a title document. At the time of its execution, no particular property, no particular item of property had even been selected to be the subject of transfer pursuant to the Surplus Property Act of 1944.

The Court: That might be an ambiguity, but the question is what does the verb "transfer" mean? There might be an ambiguity in the document as to the property covered, but what does the verb mean?

Mr. Abbott: The verb means, your Honor, whatever particular type of transfer might thereafter be made.

I suppose it is quite possible that there could have been a transfer of title thereafter, but that did not occur.

The Court: That would be the first thing that would come to your mind, wouldn't it? A transfer imports a change of title, doesn't it?

Mr. Abbott: If the administrative agency, your Honor, had given a bill of sale to some particular piece of aeronautical property selected after the date of the execution of Form 65, then we would take it, take the verb "transfer" in the general statement of Form 65 and say on that transaction where [181] a bill of sale was given a transfer meant title.

In this case we have a bailment arrangement contemplated by Plaintiff's 4, "Release of Custody," and "transfer" means transfer of possession of a bailee's interest.

The Court: I have your point. I shall not rule, as I have stated, definitively upon these questions of law at this time. We want to get the facts first. So I will deny the motion and hear the evidence.

Mr. Abbott: I did have other arguments in answer to the points raised by Mr. Blackman. If your Honor prefers, I can reserve those until later.

The Court: If you wish to file a memorandum on them, gentlemen, get the memorandum in as quickly as you can.

Mr. Abbott: We will do so, your Honor. I would like the opportunity of working on it over the week end, if that is possible.

The Court: We will see what the situation is.

Mr. Abbott: Thank you.

The Court: Do you wish to proceed first, Mr. Nelson, with your case?

Mr. Nelson: I will proceed, your Honor.

Without belaboring that last point, your Honor, I do wish to point out that Mr. Abbott has mentioned this "Release of Custody," and I believe there was also a Sales Receipt involved besides the Release of Custody, and the very title of [182] that indicates——

The Court: Those are questions of law that really do not interest the jury, and I want the jury to hear the evidence. We can discuss it in great detail sometime when we are not taking up the time of the jury. I merely wanted to make the record upon your motion, and rule upon it. I didn't intend that the argument go to this length.

You may proceed. Call your first witness. [183]

Mr. Nelson: I would like at this time to call Mr. Charles Finn.

Mr. Charles C. Finn: Your Honor, I would like to have the court explain the position which we——

The Court: You are just an ordinary witness. Take the stand.

Mr. Charles C. Finn: I would like to submit, your Honor, I will take the stand if the court orders, but——

The Court: I order you to take the stand just as any other witness. You are a party, and for that reason if you were considered to be adverse to this party who is examining you, you may be cross-examined first. But you are to be examined like any other witness. Take the stand.

Swear the witness, Mr. Clerk.

CHARLES C. FINN

called as a witness on behalf of the defendant Vine-land School District, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Charles C. Finn.

The Clerk: Be seated, please. [184]

Direct Examination

By Mr. Nelson:

Q. What is your occupation, Mr. Finn?

A. I am in the aircraft business.

Q. Would you explain that in a little more detail?

(Testimony of Charles C. Finn.)

A. Yes. We bought an airplane, N-111H, which we own; which we leased to International Airports, Inc., for which there was an advance of money, \$15,000, pursuant to a mortgage. And subsequently, the Government seized the airplane.

The Court: The question was, what is your business, not about this lawsuit. Is this lawsuit your business, this plane involved here?

The Witness: It certainly is part of my business, your Honor.

Q. (By Mr. Nelson): There is no necessity to go into those points. That is not what I desire. Just a mere statement of your occupation.

Do you know a Mr. Duly that testified here yesterday for the Government?

A. Yes, I do.

Q. After you took possession of the—physical possession of the aircraft and flew it down to Los Angeles to have work done on it, did you call on Mr. Duly in order to obtain work from his agency, if possible?

A. No, I didn't call on his—call upon Mr. Duly at [185] that time.

Q. At what time did you call on Mr. Duly?

A. Prior to taking the aircraft to International Airports.

Q. And did Mr. Duly indicate at that time what his opinion was of the value of the aircraft?

A. Yes. He told us to throw gasoline on it and burn it up. It was an A model and was——

(Testimony of Charles C. Finn.)

Mr. Abbott: We are going to object to that. There has been no proper foundation for this testimony.

The Court: What is the purpose?

Mr. Nelson: Mr. Duly has testified here, your Honor, as to the value of this aircraft, and the opinion——

The Court: You laid no foundation to impeach him, did you? You gave him no chance to explain any prior contradictory statement he may have made. Do you wish to call him for that purpose? You may do so.

Mr. Nelson: Is Mr. Duly present in court this morning?

Mr. Abbott: He is not, but I will contact him if so desired.

The Government moves that portion of the answer which came in prior to the objection be stricken.

The Court: Motion granted, and the jury is instructed to disregard it.

Do you wish Mr. Duly brought in? [186]

Mr. Nelson: Yes, I do, your Honor.

The Court: Mr. Abbott, will you arrange to have him here, if possible, this afternoon?

Mr. Abbott: I will attempt to reach him, your Honor.

The Court: Perhaps you could have someone, now.

Mr. Nelson: Would the clerk please show to the witness Defendants Finn Exhibit B?

(Testimony of Charles C. Finn.)

Q. (By Mr. Nelson): Would you read the title of this exhibit, Mr. Finn?

A. "Reconstruction Finance Corporation."

Q. Is it in the nature of an agreement?

Mr. Abbott: The document speaks for itself. We would object.

The Court: Sustained.

Q. (By Mr. Nelson): What is the date on this agreement?

The Court: It speaks for itself.

Mr. Abbott: Same objection.

Mr. Nelson: I was attempting to get it into the record, your Honor.

The Court: May it be stipulated the document has a certain date?

Mr. Nelson: I believe the agreement already has been stipulated to, and I would like to renew the stipulation at this time that that is a genuine document and as it purports to be. [187]

The Court: What is the date you offer to stipulate?

Mr. Nelson: The date is September 18, 1945.

The Court: So stipulated?

Mr. Abbott: So stipulated.

Mr. Blackman: So stipulate.

Q. (By Mr. Nelson): Where did you obtain this agreement, Mr. Finn?

The Court: This Exhibit B, is that what you are referring to?

Mr. Nelson: Yes, Exhibit B.

Mr. Abbott: We would object. The document

(Testimony of Charles C. Finn.)

appears to be one used in connection with a transaction in no way related to that before the court today; has no bearing; entirely irrelevant and immaterial.

The Court: Preliminary. Overruled.

Where did you acquire Exhibit B?

The Witness: I did not acquire this exhibit.

Q. (By Mr. Nelson): How did you obtain this exhibit, Mr. Finn?

A. Just handed to me, now. My brother obtained this exhibit, and I feel—my brother obtained the exhibit.

Mr. Nelson: I have no further questions, your Honor.

The Court: Any further questions of Charles C. Finn?

Mr. Abbott: Not at this time, your Honor.

The Court: You may step down, Mr. Finn. [188]

(Witness excused.)

The Court: The next witness?

Mr. Nelson: I would like to call Mr. George C. Finn, your Honor.

Mr. George C. Finn: I also am appearing as an ordinary witness, your Honor?

The Court: Yes.

Mr. Charles C. Finn: In that respect, your Honor, may I ask the court a question?

The Court: Yes.

Mr. Charles C. Finn: We are confused as to appearance as an ordinary witness; statement—

maybe testifying against ourselves without any proper defense in the trial——

The Court: All you are called upon as a witness to do is testify to the truth. And no one is immune from that.

Mr. Charles C. Finn: Thank you.

The Court: Even the attorneys might be on the stand in the case to testify.

Please swear the witness.

GEORGE C. FINN

called as a witness on behalf of defendant Vine-land Elementary School District, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name, [189] please?

The Witness: George C. Finn.

The Clerk: Be seated, please.

Direct Examination

By Mr. Nelson:

Will the clerk please hand Defendants' Finn Exhibit B to the witness?

Q. (By Mr. Nelson): Do you recognize this agreement, or this exhibit, Mr. Finn?

A. I do.

Q. Will you tell the court where you obtained this agreement?

A. I obtained this agreement from Mr. Bradley of the Federal Security Agency in Washington, D. C., in approximately April of 1952—'51, pardon me. '51.

(Testimony of George C. Finn.)

Q. At the time that you discussed that agreement with Mr. Bradley, did you discuss other matters in connection with surplus property?

A. I did.

Q. And particularly this subject aircraft?

A. I did.

Q. Would you state those conversations to the court?

A. I went specifically to Mr. Bradley's office to obtain the regulations and requirements under which disposal for this aircraft in suit would be administered. And in the [190-191] discussion we discussed the Form 65 agreement. We discussed the regulations that were discussed here this morning. And I asked Mr. Bradley why was there such a discrepancy between the regulations and the Form 65 agreement; especially in respect to the three-year statute of limitations.

Mr. Abbott: We object to any testimony in which the witness expressed an opinion of law or an opinion was expressed to him on a point of law.

The Court: Sustained.

Q. (By Mr. Nelson): Would you continue with the conversations that you had with Mr. Bradley?

A. I said, "Mr. Bradley, what accounts for this discrepancy——"

Mr. Abbott: Your Honor, this is going into the same point on which the prior objection was made.

Mr. Nelson: Will you please refrain from making statements which would be a conclusion of law, either yours or Mr. Bradley's.

(Testimony of George C. Finn.)

The Court: What is the purpose of this, Mr. Nelson?

Mr. Nelson: The purpose of it, your Honor, is to show admission by governmental agent that the Form 65 agreement does not comply with the regulations, in their opinion, and that a mistake was made in the formulating of the Form 65 agreement.

The Court: That is purely a conclusion of law on the [192] part of some person who may not have had any authority whatever in the matter.

Mr. Nelson: I have no further questions.

The Court: Any further questions of this witness?

Mr. Blackman: In the court's procedure, would it be in order for me to cross-examine the witness along the same lines—I mean, with respect to the same subject matter counsel has?

The Court: Yes. As a matter of order of proof, I like to dispose of a witness when he is on the stand.

Mr. Blackman: I hadn't assumed that with respect to Charles Finn. I assumed counsel would put on its case and then we would put on ours.

The Court: No. The evidence, when it has been produced, unless specifically ruled upon, will be introduced for all purposes.

Mr. Blackman: I see. Then I will have to necessarily cover other matters Mr. Nelson has not covered with this witness.

The Court: You may.

(Testimony of George C. Finn.)

Mr. Blackman: And then may I have the privilege of calling Mr. Charles Finn, in order, at a later time?

The Court: Yes, you may. [193]

Cross-Examination

By Mr. Blackman:

Q. Mr. Finn, when did you first see the aircraft which now bears the registration N-111H?

The Court: The aircraft in suit here?

Mr. Blackman: The aircraft in suit.

The Witness: Approximately May or June of 1950.

Q. (By Mr. Blackman): And was your brother with you at that time? A. Yes, sir.

Q. Now, did you have some negotiations with the Vineland School District which led to the signing of the contract, Exhibit B, Vineland's Exhibit B, the contract dated February 28, 1951?

A. Yes, sir.

Q. And as a part of that transaction were you given a bill of sale to that aircraft?

A. Yes, sir.

Mr. Blackman: Will the clerk put before the witness Defendant International Airports' Exhibit A, please?

Q. (By Mr. Blackman): Will you refer to a document entitled "Bill of Sale" in that exhibit?

A. Yes, sir.

Q. And the entire exhibit, Mr. Finn, is a group of certified copies of documents from the Civil Aeronautics [194] Administration in Washington.

(Testimony of George C. Finn.)

Now, directing your attention to the document entitled "Bill of Sale," I will ask you to examine that, please. A. Yes, sir.

Q. And is that the bill of sale which was delivered to you by the Vineland School District in connection with this airplane?

A. This is a certified copy of that document, yes, sir.

Q. Now, after receipt by you of that document, what did you next do in connection with the airplane?

A. I went to Washington to—pursuant to my contract—to see if there were any restrictions upon flying the airplane, and if there were any, to have them removed.

Q. And who did you see in Washington?

A. I first went to the Civil Aeronautics Administration and met Miss Margaret O'Neil.

Q. Who is she? A. Registrar of aircraft.

Q. For the Civil Aeronautics Administration?

A. For the Civil Aeronautics Administration.

Q. All right. And did you have a conversation with her? A. I did.

Mr. Abbott: I will object, your Honor. Any conversation with a representative of the Civil Aeronautics Administration would be wholly immaterial and void. The Civil Aeronautics [195] Administration is not given any authority to take any action with respect to aircraft in the hands of the disposal agencies, and any registration by C.A.A. is under its statute governing legislation,

(Testimony of George C. Finn.)

and not evidence of title whatsoever; and under the regulation promulgated under that statute any registration to a person who is not the owner is null and void, and may be cancelled.

Mr. Blackman: Your Honor, the object of this line of questioning is not to establish the registration certificate that was issued. That, of course, will be brought out. But the object is to show the procedures which the defendants Finn went through for the purpose of securing a waiver of the restrictions, if they secured such a waiver, and its effect on the Civil Aeronautics Administration in issuing the registration certificate which later was shown to International Airports; all being in the course of business. I think that if you just jump right into the middle of the thing, we don't have any continuity.

The Court: Isn't it sufficient to show that he went to this person and had a conversation with them about the plane, without attempting to show that some Government clerk, it may have been, presumed to know the law on the subject?

Mr. Blackman: Well, the capacity of the individual in question has been stated by Mr. Finn to have been the Registrar of Aircraft, I believe; I am not sure. [196]

The Court: But this isn't the Government agency having authority to deal with the surplus aircraft, was it?

Mr. Blackman: Only the Government authority having the power to registration.

(Testimony of George C. Finn.)

I will proceed, your Honor. I will see what we can develop.

The Court: I don't wish to preclude you, but let's stay away from any hearsay question of authority.

Q. (By Mr. Blackman): As a result of any conversation you had with Miss O'Neil, did you speak to any other Government official?

A. I spoke to the attorney for the Civil Aeronautics Administration, Mr. Howard.

Q. All right. You had a conversation with Mr. Howard. You have identified him. As a result of that conversation did you speak to any other Government official?

A. Mr. Howard referred me to Mr. Bradley's office, the Federal Security Agency, room 5526, General Services Building in Washington.

Mr. Blackman: Now, your Honor, for the purpose of the jury, may it be stipulated that the F.S.A. is the proper agency which has the power to deal with the waiver of the restrictions on this type aircraft?

Mr. Abbott: I can do better than that. I can give the exact delegation of authority in terms of the statute, of [197] regulations, if that will be agreeable.

Mr. Blackman: First, may we have an answer to that stipulation. And then if counsel wants to go ahead and read the law, I have no objection.

The Court: All you asked is the stipulation that the Federal Security Agency is the agency of the

(Testimony of George C. Finn.)

Federal Government having jurisdiction to deal with these matters?

Mr. Abbott: It is, and, your Honor, we so stipulate.

The Court: So stipulated by all parties?

Mr. Nelson: So stipulated, your Honor.

The Court: Very well.

Q. (By Mr. Blackman): And who is Mr. Bradley? I may refer to the F.S.A., Federal Security Agency. Have you ever heard it so referred to?

A. It was the Federal Security Agency, and took over from War Assets.

The Court: Let's don't get into these initials.

The Witness: F.S.A.

The Court: Let's have the energy to speak it out.

Mr. Blackman: All right. I was just thinking of the record.

Q. (By Mr. Blackman): Who is Mr. Bradley in the Federal Security Administration?

A. He was the chief of the Office of Compliance, or the disposal of surplus aeronautical property to educational institutions. [198]

Q. And approximately when did you have this conversation with him?

A. In the early part of April—last part of May, or—on a particular meeting was April 4th. I had several conversations.

Q. Pardon?

A. I had several conversations with him.

(Testimony of George C. Finn.)

Q. Is April 4, 1951, the first conversation you had with him?

A. No, sir. That was, the first conversation was approximately two weeks prior to that.

Q. And was that in person or on the telephone?

A. It was in person.

Q. Who was present at that time?

A. Mr. Bradley and myself.

Q. You have told us that was in a room in the Pentagon Building in Washington.

A. Mr. Bradley's office, Room 5526, General Services Administration Building, Washington.

Q. Very well. Now, will you tell us, as nearly as you can recall now, what was said by you and what was said by him at that time.

A. At that time I asked Mr. Bradley for information regarding any restrictions on the school aircraft. And he—— [199]

The Court: Did he tell you what aircraft he was talking about?

The Witness: Yes, sir, the Vineland School. He brought out the Vineland School file, and he showed me the Vineland School file, and the documents in it, and that was the first time I had seen Form 65, and I asked him about this Form 65, and all of the regulations upon which it was promulgated.

The Court: Mr. Clerk, will you place before the witness Plaintiff's Exhibit 1?

(The document was placed before the witness.)

(Testimony of George C. Finn.)

The Court: Will you refer to Form 65? Is that the document that you saw at that time?

The Witness: Yes, your Honor.

Q. (By Mr. Blackman): Very well. Continue with the conversation, please.

A. I said, "Mr. Bradley, is it necessary to scrap these airplanes?"

Mr. Abbott: I will object, your Honor, to any opinion that the witness expressed, or that the person to whom he was talking expressed. I take it, this conversation is to relate to some purported consent, and we want to object to testimony of that type.

The Witness: That is what I said to him.

The Court: Overruled. He may answer. You may give the conversation. The jury will understand that any opinion [200] expressed by some Government official as to what the regulations provide is not controlling. The regulations themselves are controlling. In other words, the regulations are not what some official says they are. The regulations are what the regulations themselves say they are.

Proceed.

The Witness: I asked him would he please point out to me the necessity for disposal of aircraft as scrap, that I wanted to fly it, and that I could buy the airplane as scrap, but it would be of a different value, if I was allowed to fly it it would be of a better value, and that I would like to have a ruling on that, how I could fly the airplane.

(Testimony of George C. Finn.)

And he said, "It is my opinion that this airplane must be scrapped."

And I said, "On what do you base this opinion?"

And he cited me Regulation 4.

And I said, "May I look at Regulation 4?"

And he gave me the citation for it, and he said, "You might look up all of the requirements of Regulation 4, if you care to."

And I said, "I would like to do that, and I will come back and see you later."

And I went up to the Army law library in the Pentagon.

Q. Just a minute. Was that the end of that conversation? [201]

A. That was the end of that conversation, yes, sir.

Q. Very well. Now, for continuity, what did you next do?

A. I next went to the Pentagon Army Law Library—correction—I first went to see a friend of mine, Major Dykman in the Judge Advocate General's office in the Air Force, and renewed old acquaintances.

Mr. Abbott: I will object to any conversation with the major, your Honor, because it will have no materiality whatsoever.

Mr. Blackman: I will accept the objection.

Q. (By Mr. Blackman): Mr. Finn, let me ask you to confine what you did to what you did in connection with Regulation 4 and any conversations you had with Mr. Bradley thereafter. I ask you

(Testimony of George C. Finn.)

what you next did in connection with Regulation 4, and if you went to the Law Library and looked it up say so, but if you asked somebody else about it, we cannot ask about your conversation.

A. This is Regulation 4, which I brought to the attention of Major Dykman.

Mr. Abbott: The same objection, your Honor. Apparently the witness is going to testify to a conversation with a member of the military establishment.

The Court: Don't give any conversation unless you are expressly asked to give it. You had some conversation with [202] the major, and then what did you do? Is that your question?

Mr. Blackman: Yes, it is.

The Witness: But the conversation was with respect to Regulation 4.

The Court: It does not matter what it has to do with. It might have been about a baby. You said you had a conversation. Then what did you do?

The Witness: The Major sent me to the Army Law Library, and told me where to research Regulation 4, and where to find it, and to bring it back to him when I found it.

The Court: Now, you are not going to give any of the major's expressions on the law. If you do, you will be in contempt.

The Witness: I am not going to do it.

Mr. Charles C. Finn: Your Honor, the major is an attorney there.

Q. (By Mr. Blackman): I assume you had a

(Testimony of George C. Finn.)

conversation with the Major after you had gone to the Pentagon Law Library; is that right?

A. That is right.

Q. As a result of that conversation did you have another conversation with anybody else over at the Federal Security Agency? A. I did.

Q. With whom? [203]

A. I had a conversation with Mr. Bradley, and a Mr. Heller, and a Mr. Davis, who are attorneys for the Federal Security Agency, and a conversation with Miss Margaret O'Neil, and Mr., oh, the attorney for the CAA, Mr. Howard, at a meeting of all of us in Mr. Bradley's office.

Q. All right. Now, who made the arrangements for that meeting, if you know?

A. I made the arrangements.

Q. Did you personally call each one of these individuals and invite them to this meeting?

A. I personally called them and asked them if they would come to a meeting to discuss this matter, toward my getting a registration and being able to fly this airplane.

Q. What was the date and time of this meeting?

A. The time was April 4th. It was approximately——

The Court: April 4th what year?

The Witness: 1951. It was approximately 10:00 o'clock in the morning, and it was in Mr. Bradley's office, Room 5526 of the General Services Administration Building.

(Testimony of George C. Finn.)

The Court: Would this be a convenient point to interrupt for the morning recess?

Mr. Blackman: Yes, your Honor.

The Court: You will be excused at this time ladies and gentlemen of the jury, for the morning recess, subject to the usual admonition. You are excused for five minutes. You may [204] step down

(The jury retired from the courtroom.)

The Court: Mr. Clerk, will you recess the court for five minutes.

(A short recess.)

The Court: Let the record show the jury are present. You may proceed. George C. Finn is on the stand.

Mr. Blackman: Miss Reporter, will you be good enough to read back the last question?

(The record was read.)

Q. (By Mr. Blackman): Now, will you tell us what was said by each of those parties, including yourself, at that time, to the best of your recollection?

Mr. Abbott: Your Honor, we will object to any part of the conversation except the statements by the representatives of the Federal Security Agency. There were one or two people there from some other government agency, according to the witness' testimony. We object to any statements by them.

Mr. Blackman: Your Honor, we can hardly get at this conversation piecemeal.

(Testimony of George C. Finn.)

The Court: Overruled. He may answer. Answer the question.

The Witness: I said, "The purpose of this meeting, ladies and gentlemen, is to determine whether or not I can fly a school airplane and get it registered without any [205] restrictions against the use of it. Now, it is my understanding," as I told them, "that a registration on the airplane will allow me to fly it, and will constitute a removal of any restrictions against the use of the airplane."

Mr. Abbott: Your Honor, we object, that the statement the witness has given are views of law expressed by him. I take it, the conversation relates to some purported consent of transfer by the Government, and I object on the ground that any views of law expressed are not relevant or material.

The Court: The jury will understand that the witness would not be the law, and if he were a lawyer, he is not determining the law here, so any opinions expressed at this alleged meeting as to questions of law are not binding.

I am allowing the statements made because it seems impractical to separate the wheat from the chaff, and to separate the conclusions from the other statements made. So, in order that you may hear it, why, you will hear the opinions as to the law along with anything else that was said, but you are to disregard any opinions as to the law if the court should later instruct you that the law is otherwise.

(Testimony of George C. Finn.)

The Witness: This is the conversation, as I remember it, your Honor.

The Court: I understand.

The Witness (Continuing): “——and that is what I would like to determine here at this [206] meeting?

I said, “There seems to be a discrepancy now, and we have both parties together. The Federal Security Agency has maintained that there was a requirement for scrapping the airplane, and the Civil Aeronautics Administration maintains that if I show proper title to the airplane, it can be registered and flown, but that I must show proper title. Now, I would like to know, since you are both together, what the positions of each of you is.”

And Mr. Bradley said, “Well, our position is that we must follow the regulations in disposing of any school aircraft.”

And I then said, “Well, I have researched the law on the regulations, and I have had this reviewed by Mr. Dykman—by Major Dykman, my friend.” There are several Dykmans. There is a Major Dykman in the Judge Advocate General’s office, an attorney, and there is a Mr. Dikeman, Chief of the Civil Aeronautics Administration Counsel. [207]

Q. Just state what was said.

A. I said I would like to have a clarification. And they explained that they must follow the regulations. Then I brought out for Mr. Heller’s and Mr. Davis’ use the regulations pertaining to the dismissal of surplus aircraft and the agreement,

(Testimony of George C. Finn.)

Form 65, which they had on the table before them.

And I said, "There is a discrepancy here, gentlemen. The regulations state that a three-year—after three years, as I read it—" told them, "As I read it, after three years the airplane can be disposed of in any fashion whatsoever; but that within three years if they dispose of it without scrapping it, they must get permission from your agency. Now, I would like to know what your position is on this matter."

They said, "Well, we have to conform with the regulations and the agreement."

"Well," I said, "what is the difference then between this agreement and the regulations? They do not coincide and I would like to know why they don't so coincide."

And they said, "Well, we don't—we aren't able to determine that. All we have to go on is what we have here."

And I said, "Now, the Civil Aeronautics Administration will register this airplane to me if I can prove a chain of title under their regulations." [208]

"Now, if I can prove a chain of title under their regulations, would you object to my getting the airplane registered and fly?"

And they said, "We have no control over the actions of the Civil Aeronautics Administration. If they wish to accept your proof of title and give you a registration, that will be acceptable to us. We cannot control their matters."

I said, "Well, I have been showed a policy letter

(Testimony of George C. Finn.)

from the Civil Aeronautics Administration, written by the Federal Security Agency, asking them not to register any of the school aircraft unless they got approval from the Federal Security Agency.”

“Now,” I said, “let us get this straight. Are you submitting that the Civil Aeronautics Administration can avoid complying with this policy letter, and comply with their regulations as against any other regulations that might exist? Or what do you propose, that the Civil Aeronautics Administration follows the policy letter?”

And they said, “Well, as far as the policy letter is concerned, that is merely a request by us to the Civil Aeronautics Administration.”

I said, “Fine. Then I have it understood, gentlemen, that whatever the Civil Aeronautics Administration does in respect to registering this airplane so that I may fly it is dependent upon their regulations proving the title to the [209] plane, is that correct?”

And they said, “That is correct.”

Now, I said, “In order to have the title I will need proof of it. And you have in your files a sales receipt document signed by Mr. Bates. Now, the Civil Aeronautics Administration must have the proper chain of title. And I submit to you that this is a sales document transferring the title from the Government War Assets Administration to the Vineland School. This is the document I would like to submit to the Civil Aeronautics Administration toward getting my registration to allow me to fly the plane.”

(Testimony of George C. Finn.)

And I told them, "I can buy a scrap airplane and reduce it to its basic material content and have no difficulty at all with any of these restrictions. But if the three years has elapsed, and I have the proper title, I expect to get it registered, under the law, by the Civil Aeronautics Administration."

And they said, "Well, if you can prove that—but you have to have a bill of sale from the Federal Security Agency to the school."

Q. Who said that?

A. The attorneys for Mr. Bradley. They were both there, Mr. Heller and Mr. Davis.

Q. Will you kindly specify, instead of the word "they," who it was, as nearly as you recall? [210]

A. Mr. Heller and Mr. Davis said, "You would have to have a bill of sale."

"Well," I said, "There are documents here that say no formal bill of sale will be issued between the Government and a school, and I assume that to be, that any other document would transfer the title, and I have here a sales receipt——"

Mr. Blackman: Just a moment. For clarity's sake, Mr. Clerk, will you lay before the witness International's Exhibit A, please, consisting of the group of certified copies of documents from the Civil Aeronautics Administration?

Q. (By Mr. Blackman): When you said, "I have here a sales receipt," were you referring to the sales receipt dated July 10, 1946, which is a part of that exhibit?

(Testimony of George C. Finn.)

A. This one signed by Mr. Bates, that is correct.

Q. Very well. And when you referred to a document which said "No formal bill of sale will be issued," do you know what document you were referring to? Anything you have seen in this court-room?

A. That was a release of custody form, 1316, if I remember correctly, and it stated on those forms, "No formal bill of sale will be issued."

Now, that may have been this particular one, or it may have been another one that they had in their files. I don't know whether this one referred specifically to this case. [211]

Q. Have you seen that document in this court-room at all?

A. I think Form 1316 here. It may have said it on that, or may have said it on another one.

Mr. Blackman: Do you have such a document?

Mr. Abbott: Yes, I do. I think I know the exact document the witness is referring to, and I can find it in a moment.

Mr. Blackman: Mr. Clerk, will you mark for identification that group of documents, please?

The Clerk: The entire group?

Mr. Blackman: Yes, the entire group.

Mr. Abbott: Can that particular document be detached? The certification includes some copies of documents which are my only copies.

Mr. Blackman: I am willing to have it detached.

The Clerk: Just this one?

(Testimony of George C. Finn.)

Mr. Blackman: Yes.

The Court: Let the document be marked Defendant International Airports' Exhibit—K, is it, Mr. Clerk?

Mr. Blackman: May it be marked Exhibit T, your Honor?

I have other exhibits which have just come up, and I have allocated those other letters to them. It makes no difference, but——

The Court: Exhibit T? [212]

Mr. Blackman: T.

The Court: It may be so marked; Exhibit T for identification.

(The document referred to was marked Defendant International's Exhibit T for identification).

The Court: Do you wish the exhibit placed before the witness?

Mr. Blackman: If the court please.

Q. (By Mr. Blackman): Is that a copy of the document you referred to a moment ago when you referred to a document that said "No formal bill of sale will be issued"?

And you have now had placed before you International's Exhibit T for identification.

A. This is the document—this is form 1316, as I remember it. But it seems to have punched out the top here. If this is a Form 1316,—I believe it is. I believe this is the document which I saw and——

(Testimony of George C. Finn.)

The Court: It appears to you to be that document?

The Witness: It appears to be; yes, sir.

Mr. Blackman: Very well.

The Witness: It seems to. A document, it said something about "No formal bill of sale will be issued." On the document it says, "No certificate of title will be issued."

Q. (By Mr. Blackman): I have asked whether that is a copy of the same document you saw. What is your answer to [213] that, sir?

A. With that slight confusion in wording, I would recognize this as the same document.

Q. In other words, the one that you saw was the same form as that document, but it had the different wording on it that you just now testified to?

A. I believe that is correct.

Q. Very well. With the identification of those documents, Mr. Finn, will you proceed with what else was said in the conversation by anyone on that morning?

A. I said, "Now, gentlemen, the question of the bill of sale is very important to me, or the civil Aeronautics Administration will not register this airplane for flight purposes; unless I can prove ownership. And if no formal bill of sale is going to be issued—" That wasn't part of the conversation, of the certificate of title,—“is it possible that a bill of sale, an informal bill of sale has been issued. We have here in your own files a sales

(Testimony of George C. Finn.)

receipt,"—and I referred to this sales receipt signed by Mr. Bates, Exhibit—

Q. That's International's Exhibit—part of International's Exhibit A for identification. Go ahead.

A. "And from my research in the library this has all the markings, all the requirements of a bill of sale. It says, 'Sales receipt,' and it gives the price, and it shows that money was passed for an item. And as far as I am [214] concerned I consider that this is a sales document for passage of title. Do you consider that a bill of sale?"

Well, they thought for a while, both Mr. Heller and Mr. Davis, and they protested that it didn't say the transfer of title on it, and I agreed with them that it did not. And I asked them, "Now, as attorneys, does this have all the fundamental requirements of a bill of sale?"

And they finally agreed that it did. And I said, "Now, is there any objection to my presenting this, as part of my chain of title, to the Civil Aeronautics Administration so that they can register this airplane?"

And they said, "We have no objection as to what the Civil Aeronautics Administration does."

I said, "Remember the policy letter. Now, I want to know whether or not we are going to follow the law and the regulations, or some kind of family arrangement between two agencies of the Government. And I would like to have it squared away once and for all. And I want to know what the Civil

(Testimony of George C. Finn.)

Aeronautics Administration will do and what you will do."

And they said, "We will not consider any policy letter as affecting any results that the Civil Aeronautics Administration wishes to take; or any action, they wish to take."

I said, "Thank you, very much."

Now, to the C.A.A., "What do you propose? Do you propose [215] to follow the policy letter, or do you propose to regulate and grant and accept any evidence I have of title, pursuant to our discussion here?"

And they said, "Well, there is one position that we would like to clear up. That is a condition subsequent." This is Mr. Howard talking, Attorney for the Civil Aeronautics Administration.

"There is a condition subsequent. We recognize that there is a means whereby property can be transferred and title retained in the seller, or transferor, and one of those is a condition subsequent."

"Now, if you will satisfy us as to that point, whether or not we have a condition subsequent, we will determine what action we will take."

And I said, "Fine, Mr. Howard, I will look into that problem."

And then I went back to Mr. Bradley and I said, "Mr. Bradley, there is one thing I would like to clear——"

Q. I am sorry. Is this part of the same conversation?

(Testimony of George C. Finn.)

A. Part of the same. I went back to Mr. Bradley later.

Q. Well, all right. To preserve continuity, was anything else said at the same conversation which you have stated occurred on April 4, 1951?

A. I think that is approximately the sum and substance of it. [216]

Q. Very well. Now, what did you do then?

A. Then I went back to Major Dykman, who allowed me to go to the Army Library. And I studied conditions subsequent for about a week; went through all the cases on the law.

The Court: We don't care about that. You are not a lawyer. Even if you were a lawyer you wouldn't be permitted to express your opinion, because here what the court says is the law; not what some lawyer says. And you aren't even a lawyer.

Q. (By Mr. Blackman): Did you have another conversation then with Mr. Bradley?

A. I went back then to Mr. Bradley.

Q. when was that?

A. And that was—well, after I went to Mr. Bradley, I went back to Mr. Dikeman—

Q. Let's skip Mr. Dikeman.

A. Not Major Dykman—Mr. Howard, the C.A.A. attorney who asked me to look up the conditions subsequent.

Mr. Abbott: I will object to conversations of Mr. Howard where there was not present an agent of the Federal Security Agency.

Mr. Blackman: I haven't asked any question.

(Testimony of George C. Finn.)

The Court: I know, but I will ask you to guide the examination and put your questions very promptly so the witness [217] is not invited to roam around.

Mr. Blackman: All right.

Q. (By Mr. Blackman): I believe the question was, did you have another conversation with Mr. Bradley?

A. Yes, I did. I went back to Mr. Bradley, and it was Mr. Bradley and I in his office. I said "Mr. Bradley, I have gone through the subject of conditions subsequent, and I have been to see Mr. Howard, and he agrees with me that there is no condition subsequent; and that he is willing to register the airplane, and upon the documents which I have submitted.

"Now, I would like to know, for my own information, one more thing. How is it that this agreement Form 65 does not comply with the regulations"?

Mr. Abbott: We are venturing into a field solely obtaining to an opinion of law.

The Court: Where did you find all about conditions subsequent? Did you find a book on it?

The Witness: I went through the Army library, with the help of Major Dykman.

The Court: I would like to know myself where you found it all.

The Witness: I found, not allow condition subsequent unless determined in the deed to the property and so stated in language that it was clear to the court. [218]

(Testimony of George C. Finn.)

The Court: I wish it were that simple. A little learning is a dangerous thing.

Mr. Blackman: We are back now on the conversation you had with Mr. Bradley. Counsel offered an objection. I believe if it is conversation with a representaive of the Federal Security Agency bearing upon this aircraft, it should be admitted.

The Court: It will be admitted. Overruled.

The Witness: I said, "There is something wrong here. Things just don't jibe. The regulation says one thing and the agreement says another. And you have a policy letter with the C.A.A. Please tell me how this regulation was formulated—I mean, this agreement was formulated; where did it originate?"

And he said, "I thought somebody would ask that question some day." And he took out of his drawer this sample copy, this exhibit that somebody asked my brother to look at.

Mr. Blackman: Are you referring to——

The Court: Plaintiff's Exhibit 1.

Mr. Blackman: No, sir, I believe the witness may be referring to this SWPD-35 agreement, Finns' Exhibit B.

May that be laid before the witness?

The Court: Yes.

Q. (By Mr. Blackman): Have you looked at that?

A. Yes, I know of this. [219]

(Testimony of George C. Finn.)

Q. Was that the document that you were referring to in your conversation?

A. This is a copy of the document he took out of his drawer.

Q. Very well. Now, continue, please.

A. And it was on very thin paper, as I recall. And he said—I said, “I would like to know how this agreement was made up.”

He said. “I thought someone would ask that question.” And he took this out of his——

The Court: By “this,” you mean a document, a copy of Defendants Finn Exhibit B?

The Witness: Yes, your Honor.

The Court: For identification.

The Witness: Yes, your Honor.

The Court: Proceed.

The Witness: And he said——

Mr. Charles C. Finn: May I submit that he took out of his drawer the original——

The Court: You are not the witness: If you interrupt again something is going to happen to you. You are just sitting there as a witness and a party.

Q. (By Mr. Blackman): Was your brother present at that conversation?

A. No, sir, just Mr. Bradley and myself. [220]

Q. You tell us what happened, and what was said.

A. He said, “I have here a copy—I mean, the jacket that went to the printer. And this is an old form that was initiated by the RFC, Reconstruc-

(Testimony of George C. Finn.)

tion Finance Corporation, who first had the authority to dispose of these airplanes.

“Now, Reconstruction took over, gave over to War Assets Administration, and when they gave over their authority to War Assets Administration, a new form had to be made. And the new form was copied from the old form. And these crosses and alterations were made on it and was sent to the printer to make up the new form.”

Q. By “these crosses and alterations,” you are referring to the markings which appear on Finns’ Exhibit B for identification?

A. Yes, sir, this circle around Section 101 clause, down to “Legislation.”

Q. And by “the old form,” you are speaking about the same document, Exhibit B?

A. Yes. This is the old form that was sent to the printer for purposes of printing up the new form.

Q. Very well. And you are holding in your hand Exhibit B. Go ahead.

A. That is right. And they had “out” marked on it and check-marked——

The Court: You weren’t asked what the changes were. You [221] were merely asked if there were changes.

Q. (By Mr. Blackman): And the conversation. Please continue.

A. Right. And I said to him, “Is it possible, Mr. Bradley, that the change of this form is what failed to comply with the regulations; that instead of writing a new form according to the new regula-

(Testimony of George C. Finn.)

tion, that copying this old form they brought forward the rescinded regulations requiring the scrapping and mutilation of these ariplanes?"

He said, "That is entirely possible."

I said, "Are we to assume, now, Mr. Bradley, that this whole scrap warranty program is promulgated on administrative error in the making up of the forms copies from an old agreement?"

He said, "Well, Finn, that is just about the size of it." [222]

Well, I said, "Thank you very much. That clears up the last question in my mind regarding the scrapping of these aircraft, and I will go to the CAA."

And I went to the CAA and obtained a registration.

Q. All right. Before you tell us about that, did you have any further conversations with Mr. Bradley?

A. Oh, yes. I said, "I would like to have a copy of that jacket, that I have to leave town immediately, and can you do it for me right away?"

He said, "I will have it for you within an hour." And he sent it down to have it printed.

When I came back I asked him if it was ready. He said, "Yes, it was ready," and he gave it to me.

Mr. Blackman: All right. International offers Defendants' Finn Exhibits B, for identification, in evidence at this time.

Mr. Abbott: To which we object, your Honor.

(Testimony of George C. Finn.)

Even assuming this occurred, it is wholly irrelevant and immaterial.

Mr. Blackman: I object to counsel's statement, "even assuming this occurred." This witness is testifying, and he is under oath. Is counsel assuming this witness is lying?

The Court: That is an improper statement to make at this time. You may reserve any comments on the witness' testimony until the argument. The jury will disregard counsel's comment. [223]

The objection is overruled, and the defendants Finn Exhibit B, for identification, is received in evidence as an exhibit on behalf of the defendant International Airports, Inc.

(The document referred to, marked Defendants Finn Exhibit B for identification, was received in evidence on behalf of Defendant International Airports, Inc.)

Q. (By Mr. Blackman): Mr. Finn, did you have any other conversation, that you can recall, with Mr. Bradley or anyone else at Federal Security Agency at approximately that time?

A. No, sir.

Q. During the course of the last conversation to which you testified, did you say anything to Mr. Bradley to the effect that CAA was going to register the airplane for you? A. Yes, I did.

Q. What did you say in that connection, please?

A. The CAA would register the airplane, because they agreed there was no condition subsequent

(Testimony of George C. Finn.)

and no title—I mean, the title had passed and would not revert.

Q. You said that to Mr. Bradley?

A. That is right.

Q. All right. Tell us what you did next, then, in connection with this airplane.

A. I went to the CAA and got the registration, and submitted these documents as proof of [224] title.

Mr. Abbott: Your honor, we object to this last answer. The registration by CAA is wholly immaterial.

The Witness: Your Honor, the registration is for flying.

The Court: You are a witness. You are not to participate. You and your brother said you are not participating in this trial. Do you recall that?

The Witness: Yes.

The Court: That is the reason I cut you short. Whenever you want to participate, however, you may do so. But having announced your intention time and time again not to participate as parties, I shall not hear you except as witnesses until you change your mind.

The Witness: Your Honor, we would like to participate——

The Court: As parties?

The Witness: ——but we would like to have a regular jury arrangement.

The Court: All right. I have heard all I want to hear about that.

(Testimony of George C. Finn.)

The Witness: It isn't that we don't want to participate. We are anxious to.

The Court: Do you understand the English language?

The Witness: Yes, sir.

The Court: I don't want to hear any more about the jury.

Mr. Blackman: Miss Reporter, was there a question? I am sorry, but I lost the continuity. [225]

(The record was read.)

The Court: The Government's objection is overruled.

Q. (By Mr. Blackman): Now, Mr. Clerk, will you lay before the witness—perhaps he already has it—International's Exhibit A, for identification. Do you have that, the group of photostatic copies from the CAA? A. Right; Exhibit A.

Q. Yes. When you say you submitted these documents, what documents do you refer to?

A. I submitted the sales receipt.

Q. Which is dated July 10, 1946, which is a part of that exhibit? A. That is right.

Q. What else?

The Court: That exhibit is International Airports' Exhibit A?

Mr. Blackman: Yes, sir.

The Court: What else did you submit at that time?

The Witness: I submitted the affidavit of Peter Bancroft.

(Testimony of George C. Finn.)

The Court: Which is also a part of International Airports' Exhibit A; is that correct?

The Witness: That is correct, your Honor.

The Court: What next, if anything, did you submit to the Civil Aeronautics Administration at that time? [226]

The Witness: I submitted a letter from the files of the Archives of the General Services Administration, which stated that aircraft——

The Court: No. Just a moment. Where is the letter?

The Witness: That is in my file, your Honor.

The Court: Is it marked as an exhibit here?

The Witness: Yes, your Honor. I don't know that it is marked. It is in the file, which is the complete file of the Civil Aeronautics Administration.

The Court: Where is the copy of it?

The Witness: It is in the exhibits.

The Court: Here?

The Witness: Yes, your Honor. I can find it.

The Court: Suppose you find it.

The Witness: I don't know that it is marked as a specific exhibit, but it is in that group of papers.

The Court: Very well. You may find it. Step down. You may find the exhibit.

The Witness: Your Honor, I marked several items in here.

The Court: What is "here" now? Exhibit what?

The Witness: In this whole group?

(Testimony of George C. Finn.)

The Court: Exhibit what?

The Witness: It is Exhibit K and K-1.

The Court: All right. Where is the letter in there?

The Witness: Oh, this is marked as K-1. [227]

The Court: The letter to which you have been referring is defendants Finn Exhibit K-1; is that correct?

The Witness: Yes, your Honor.

The Court: According to my notation here, that is a handwritten statement from W. P. Howard. At least, that is the way it appears on the list of exhibits filed October 27, 1954. Will you state what it is?

The Witness: Pardon me. That is my fault. K-1 is my marking. The clerk's marking is Exhibit K-1.

The Court: Which is which?

The Witness: K-1 is the first.

The Clerk: K-1 is dated April 16th.

The Court: K-1-3, is it?

The Clerk: K-1-3, for identification.

The Witness: That General Services Administration letter?

The Court: K-1-3 is the identification. You refer to a letter dated April 16, 1951, to the, or, from the Federal Records Center, General Services Administration, to the Records Branch of the Civil Aeronautics Authority? Is that what you refer to?

The Witness: Yes, your Honor.

The Court: Is that agreed, gentlemen?

Mr. Blackman: Yes, your Honor, it is agreed.

Your Honor, may I see that letter for a moment?

(Testimony of George C. Finn.)

The Court: Yes, that letter being defendants Finn [228] Exhibit K-1-3, for identification.

Is that K-1-3, Mr. Clerk, or just simply K-3?

The Clerk: Your Honor, I have it marked as K-1. As I understood it, there were only the two, K and K-1, offered by the defendants Finn. In this list it goes clear up to 21, inclusive.

The Court: Apparently, this letter in question is the third document in the exhibit, is it?

The Witness: It is, your Honor.

The Court: Let it be marked K-3, and not K-1-3.

The Clerk: No, that is not the third one in the exhibit.

The Witness: Well, this (indicating) is an index.

The Clerk: This is the fourth one, isn't it?

The Witness: Yes.

The Clerk: It is the fourth document.

The Court: What has heretofore been marked, Mr. Clerk?

The Clerk: K is marked here.

The Court: What is K? K is the entire exhibit, is it not?

The Clerk: No, it is just this one. It is an affidavit with a handwritten letter, and then an affidavit of Peter A. Bancroft.

The Court: What is the handwritten letter marked?

The Clerk: That is by W. P. Howard.

The Court: Is that marked? [229]

(Testimony of George C. Finn.)

The Clerk: That is K.

The Court: That is Exhibit K?

The Clerk: And K-1 is a letter.

The Court: Let that be marked K-1, the handwritten statement be K-1; the affidavit of Peter A. Bancroft will be K-2, that is, the affidavit of Peter A. Bancroft dated April 14, 1951.

The Clerk: Yes, your Honor.

The Court: And then this letter concerning which the witness has just testified will be marked K-3.

The Clerk: Yes. That is dated April 16, 1951.

The Court: It will be so marked.

(The document referred to was marked Defendants' Finn Exhibit K-1, K-2, and K-3 for identification.)

You may now proceed, Mr. Blackman.

The Witness: Pardon me. I submitted this letter——

The Court: This letter being Exhibit K-3?

The Witness: Yes, your Honor—to correct the affidavit by Peter Bancroft, which had——

The Court: Which is Exhibit K-2?

The Witness: ——which is Exhibit K-2, where the numbers on the aircraft were 42-23645, and after a search of the records they submitted this letter to show that 42-3645 and 42-23645 were one and the same airplane. This I had to do to prove the chain of title, to show there was no discrepancy as [230] to the airplane which is mentioned in the

(Testimony of George C. Finn.)

documents, and that is how I found this Sales Receipt by the General Services Administration.

The Court: Which is what exhibit? Is that Airports' exhibit T?

The Witness: That is the blue card that we requested.

The Court: That has not been marked?

The Witness: Has not arrived, no, your Honor.

It was in the search to determine the validity of the numbers of the plane that they uncovered the blue card, the historical record of the plane, upon which they based the writing of this letter.

The Court: Who is "they"?

The Witness: The General Services Administration wrote this letter to the Civil Aeronautics Administration to identify the airplane.

The Court: This letter being Exhibit K-3?

The Witness: Yes, sir, based upon the blue card, which was marked, "Sold to Vineland School."

The Court: Put your next question.

Q. (By Mr. Blackman): Were you at the General Services Building at the time the search was made to determine the numbers?

A. Pardon?

The Court: Is this material? [231]

Mr. Blackman: I wanted to get to the blue card. There has been some testimony about a blue card. The Government hasn't produced it, and I think we are entitled to put in secondary evidence, as the witness saw it.

(Testimony of George C. Finn.)

Mr. Abbott: That is an unfair statement. Counsel knows that the Government has an affidavit stating that a thorough search has been made.

Mr. Blackman: I have never seen it.

Mr. Abbott: I have it.

The Court: Gentlemen, you know you will be in contempt if you continue with that. In the noon recess I want each of you to read what is on the counsel table, on the boards there. And if you haven't read it, don't come into this court again until you have, and don't be guilty of that again.

Mr. Blackman: I apologize to the court.

Mr. Abbott: As do I, your Honor. May I tender the affidavit?

The Court: And no more comments upon matters of that sort by either of you.

Mr. Blackman: May I proceed, your Honor?

The Court: You may.

Q. (By Mr. Blackman): Mr. Finn, were you at General Services Administration Building at the time the search was made to determine the numbers of this aircraft?

A. I was at the General Services Administration [232] Archives Building in Alexandria, and made the search with the custodian of Records.

Q. Now, you have spoken about a blue card. Will you describe the card? Did you see such a card?

A. Yes, sir, I did.

Q. And was it during this time that you were in Washington?

A. Yes, sir.

(Testimony of George C. Finn.)

Q. And where did you see it?

A. I saw it in the file section of the Archives, and it had a great many tiers of records, and I believe we were on approximately the fifth floor of this archives building, in a section of the files where all of the aircraft records were kept that were transferred from the Air Force to the War Assets Administration, and when the War Assets Administration went out of business they transferred them to the archives, and they had these files in this particular section, and they were designated, "Historical Records of Aircraft." And in this file the man and I standing right there searched for such a number as 42-23645, and we could not find it. We only found the number 42-3645, and the blue card was about, oh, 8-inches by 3½, with lines on it, and it stated, "42-3645 Historical Record Aircraft," and stamped across the face of it was in large letters "Sold," and "Vineland School District."

Mr. Blackman: May it be stipulated that that is the number [233] of the airplane in suit?

Mr. Abbott: No. 42-3645?

Mr. Blackman: Yes.

Mr. Abbott: So stipulated.

Mr. Blackman: Very well.

The Witness: And upon this card, or from this card I asked this man if he would verify with the CAA by letter that they were one and the same aircraft, so that I could obtain a registration, and I asked him to address the letter to Miss Margaret O'Neil, which he did.

(Testimony of George C. Finn.)

Q. (By Mr. Blackman): And that is the letter, Exhibit K-3, you have referred to?

A. Yes, sir, K-3.

Q. To whom at the CAA did you submit these documents?

A. I submitted them to Mr. Dikeman—pardon—to Mr. Howard.

Q. Mr. W. P. Howard?

A. Mr. W. P. Howard

Q. You have identified him as one of the attorneys at CAA?

A. He is assistant counsel under Mr. Dikeman of the CAA.

Q. And was there anything else required by CAA, as far as you know, before they issued you a registration certificate?

Mr. Abbott: Your Honor, once again I object to the entire line of testimony on the CAA proceedings. A registration [234] of airplane by statute has no bearing upon title.

The Court: The objection to the pending question is sustained. You may ask what happened next.

Mr. Blackman: Thank you, your Honor.

Q. (By Mr. Blackman): What happened next?

A. Well, I presented these documents, and I said, "Now, Mr. Dikeman, have I proved to you the chain of title, and are we satisfied?"—

Mr. Abbott: Your Honor, we make the objection that this is a conversation within the Civil Aeronautics Authority, which does not have the power and

(Testimony of George C. Finn.)

does not purport to have the power to effect title to the property.

Mr. Blackman: May I be heard? Your Honor, this line of questioning goes to the affirmative defense of estoppel against the Government. We want to show that the registration certificate was passed upon, satisfying CAA's—

The Court: Do you expect to offer this certificate?

Mr. Blackman: Yes, your Honor.

The Court: Why don't you just offer it? What difference does it make what the witness and Mr. Dikeman talked about?

Mr. Blackman: Actually, I think we can shorten the proceeding by following your Honor's suggestion.

The Court: All right.

Q. (By Mr. Blackman): Mr. Finn, do you have before you International's Exhibit A, for identification, a group of [235] certified copies from CAA?

A. Yes, sir.

Q. Will you turn to a photostatic copy of a certificate of registration on aircraft in N111H, dated April 16, 1951? A. Yes, sir.

Q. Is that a photostatic copy of the certificate of registration issued by CAA to you at that time?

Mr. Abbott: To which we object, your Honor. Whether or not a certificate was issued is wholly immaterial. The certificate would prove nationality, and nothing else. Nationality is not an issue here.

The Court: Overruled.

(Testimony of George C. Finn.)

The Witness: I can't see that word "Certificate of Registration." There are two forms that are filled out. One is "Application for Registration," and the other is "Certificate of Registration," and they are quite similar. If I could take this apart, to see whether that says "Registration Certificate," I would be able to identify it.

The Court: Mr. Clerk, will you assist the witness?

The Witness: I didn't want to destroy the certification.

This says, "Certificate of Registration," and this is a copy of that certificate.

Q. (By Mr. Blackman): Very well. By the way, Mr. Finn, [236] I notice more than one certificate of registration in there, all being to you and your brother, and all relating to the same airplane, or apparently from the same file, the airplane in suit. Can you explain how it happens that there is more than one?

A. When I had the airplane at International in the hangar, the CAA came around and said, "There seems to be some discrepancy on the numbers on your airplane. Did you change any numbers?"

I said, "No, I did not change any numbers." And I gave them the number as the Aircraft Serial No. 1-232.

And they said, "That is not the aircraft serial number on this airplane. Where did you get it?"

I said, "I got this identification from the files in Washington, on documents that were in those files."

(Testimony of George C. Finn.)

And they said, "Well, we think there has been an irregularity here, and we are going to check into it."

I said, "For your information, everything that we have done is on file in Washington with the Registrar of the Civil Aeronautics Administration, and if there is any discrepancy, I will write them a letter and have them correct it."

And so I examined the airplane, and found a serial number on the plane, 2-6678, and I sent a letter to the Civil Aeronautics Administration asking that that number be included with the 42-3645, and 1-232, so that all the markings on the [237] plane will be satisfactory to any of the CAA representatives. And that is why they issued this new certificate, which says, "Letter sent to Washington, D. C., for correction, Charles C. Finn and George C. Finn," and that letter is in the file.

The Court: Would this be a convenient point to interrupt for the noon recess?

Mr. Blackman: Yes, your Honor.

Mr. Abbott: May I tender the affidavit to which I have referred, and which has been previously made available, your Honor?

The Court: Do you offer it in evidence?

Mr. Abbott: I will offer it in evidence as the Government's exhibit next in order, your Honor.

Mr. Blackman: May I ask counsel if he has a copy of it?

Mr. Abbott: I do.

The Court: Is there any objection to the offer?

(Testimony of George C. Finn.)

Mr. Blackman: No objection, your Honor.

Mr. Nelson: No objection.

The Court: Received in evidence as Plaintiff's Exhibit——

The Clerk: 10, your Honor.

(The document referred to, marked Plaintiff's Exhibit No. 10 for identification, was received in evidence.)

The Court: We will take the noon recess at this time, ladies and gentlemen of the jury, until 1:30 this afternoon.

Before we separate, I would again admonish you of your [238] duty not to converse or otherwise communicate among yourselves, or with anyone else, upon any subject touching upon the merits of this trial, and not to form or to express an opinion on the case until it has been finally submitted to you for your verdict.

You are now excused until 1:30 this afternoon.

You may step down.

(Thereupon the jury retired from the courtroom.)

The Court: Recess until 1:30.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m., of the same date.) [239]

OCTOBER 28, 1954—1:40 P.M.

The Court: Are there ex parte matters?

The case on trial, let the record show that the jury are present.

Mr. Wallace: If the court please, defendant Seaboard Surety Company wish at this time to waive any and all claims to the aircraft in question and discharge any right, title and interest therein or thereto; and request the court dismiss as to Seaboard Surety Company.

I understand Mr. Abbott will seek authority from Washington to do that with regard to the cost in Seaboard Surety Company and we are willing he should seek this authority and notify the court tomorrow.

Mr. Abbott: Counsel's statement is correct, your Honor. As I understand the position of Seaboard will be made a matter of record here, namely, they disclaim any interest in the aircraft. I will seek authority to dismiss the claim with cost to neither party, and we will move promptly to secure that authority from the Attorney General.

The Court: Very well. The jury will understand then that Seaboard Surety Company no longer claims any interest of any kind in the airplane in suit.

The defendant George C. Finn was on the witness stand, I believe. [240]

GEORGE C. FINN

a witness called on behalf of defendant Vineland Elementary School District, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination

(Continued)

By Mr. Blackman:

Mr. Clerk, will you lay before the witness Defendant International's Exhibit A for identification, please.

Q. (By Mr. Blackman): Mr. Finn, looking at Defendant International's Exhibit A for identification, I believe before the recess you had identified all of the documents which are a part of that exhibit, is that correct? A. That is correct.

Mr. Blackman: If the court please, International now moves defendant International's Exhibit A in evidence.

Mr. Abbott: May I have a moment to review the list of documents here, your Honor, before tendering an objection?

The Court: You may.

Mr. Abbott: That one document, your Honor, actually consists of a number of separate instruments. We object to certain portions, as follows: the original and duplicate of certificate of registration, N-111H, April 16, 1951; duplicate copy of corrected certificate of registration N-111H, issued June 18, 1952. [241]

We object to them on the grounds that the cer-

(Testimony of George C. Finn.)

tificate of registration has no force or effect, is not a declaration of title, simply a declaration of the nationality; and under the regulations promulgated to the C.A.A. Act it is void if title is not in the party who in fact secures registration.

The Court: What is the purpose of the offer?

Mr. Blackman: The purpose of the offer, your Honor, is to show that the registration certificate was issued by the Administrator of C.A.A., based upon the knowledge of sale of the aircraft to Vineland School District and the resale by Vineland to the Finns; and based upon the conferences which the witness has testified occurred over at the Federal Security Agency; that certificate of registration was the same certificate that was shown to International Airports later on, as its testimony will develop.

The Court: Well, the objection is overruled, and International Airports' Exhibit A for identification is now received in evidence.

(The document referred to, and marked International Airports' Exhibit A, was received in evidence.)

Mr. Abbott: May we make the limiting objection, your Honor, that it is received—that is, the document objected to is received solely for the purpose of showing what representation and what documents were displayed to International, and not as any evidence of title? [242]

(Testimony of George C. Finn.)

The Court: Well, the sales receipt might be in an entirely different category.

Mr. Abbott: I do not interpose an objection to that document, your Honor. [243]

Mr. Blackman: Your Honor, may I be heard on that?

The Court: The exhibit is received without limitation.

(The document referred to, marked Defendant International's Exhibit A, was received in evidence.)

Mr. Blackman: Mr. Clerk, will you lay before the witness Finns' Exhibit E, please?

(The document referred to was handed to the witness.)

Q. (By Mr. Blackman): Have you examined that document? A. Yes, sir.

Q. Where did you first see it?

A. I first saw this document in Washington in the files of Mr. Bradley at the Federal Security Agency's office.

Q. Now, did you see that document in the original or in the photostatic copy form which it now appears to be?

A. I saw it in the original.

Q. How did you obtain the photostatic copy?

A. I typed a copy of the original, and this is a photostat of the paper that I typed. Mr. Bradley gave me a typewriter and said, "Well, we can't remove these files from the office, but if you care to

(Testimony of George C. Finn.)

copy out this information, why, sit right down here." And I did.

Mr. Blackman: If the court please, I believe there has been a stipulation that the document is genuine, and we will offer it in evidence at this time.

The Court: The offer is what? What [244] exhibit?

Mr. Blackman: Finns' Exhibit E, the photostatic copy of a teletype, dated July 10, 1946, from Heddlestone, Regional Director, to Chief, Fiscal Branch.

The Court: Is there objection?

Mr. Abbott: No objection, your Honor.

Mr. Nelson: No objection, your Honor.

The Court: Received in evidence.

(The document referred to, marked Defendants Finn Exhibit E, was received in evidence.)

Mr. Blackman: May I proceed, your Honor?

The Court: Yes, you may.

Q. (By Mr. Blackman): Mr. Finn, have you told me about all the conversations that you had with Mr. Bradley at Federal Security Agency before you left Washington on this trip which you made in April, 1951?

A. I testified that all of those—that that was all I could recall, and I have recalled in the meantime that we discussed also this particular document. And I asked him——

(Testimony of George C. Finn.)

Q. Referring now to Finns' Exhibit E?

A. Yes.

Q. Very well. What did you discuss in connection with that document?

A. Well, that came up in respect to the question on this sales receipt, as to whether or not it constituted a bill of sale upon which registration could be granted. [245]

And they said, "Well, this is a sales receipt, all right, but what about the airplane? No marking there as to the identity of this sales receipt for any transaction."

And I pointed out this letter that they had in their file, which stated that on July the 10th, '46, the War Assets had received money from the Vine-land Elementary School District, and I pointed out to them that there was even the check number in this letter, a certified check number, and the amount was \$300, which corresponded exactly with the amount of money on the sales receipt; and that I would further verify this when I returned to California, and even look up the check, which was in the Bank of America in Los Angeles.

So I established with them that this sales receipt was the sales receipt in reference to this airplane, designating this check number.

Q. Does the number of the airplane appear on that document, Finns' Exhibit E?

A. It does. It appears here as 42-3645 in this document.

Q. Very well. Now, have you told me everything

(Testimony of George C. Finn.)

that was the subject of discussion between you and Mr. Bradley during that visit to Washington?

A. As near as I recall, Mr. Blackman, that is the sum and substance. If anything comes up later, I will notify you.

Q. Did you have any conversations with anybody at [246] General Services Administration, other than what you have testified to this morning, in connection with looking up the number on the airplane?

A. Anyone in the General Services Administration?

Q. Yes.

A. At this time, in connection with this?

Q. During this trip.

A. No, sir. I contacted the Federal Security Agency and the archives of the General Services Administration. Those are the offices that I went to.

Q. As a result of that contact with General Services Administration, you state that the letter, K-3—I believe it has been identified as K-3—was written to CAA? A. That is right.

Q. Now, when did you return to California following that trip?

A. It was about six weeks later. I spent some time in New York and then came back to California.

Q. Did you do anything in connection with this airplane following that?

A. Upon my return?

Q. Yes.

(Testimony of George C. Finn.)

A. I attempted to—well, what I did was show the registration to Mr. Bancroft, and told him that my trip had been successful in Washington, that I had secured the proper [247] releases that were necessary to fly the airplane, and that I had a registration certificate on it which would allow me to fly it, and that if I didn't have that registration certificate I would not be able to fly it. And I emphasized that fact to him, as granting the proper clearances so that the airplane could be flown, because there was only one question between us, as to whether or not we could fly this airplane.

And I said, "Here is my evidence, and based upon this and my conversations in Washington, I have been granted the permission to register this airplane as the owner, and, therefore, I can fly it."

Q. Did you have access to the airplane after you came back to California?

A. Yes, sir, we had access outside of school hours.

Q. I see. Then were you in the airplane outside of school hours during that period following your return from the East?

A. Yes, we went through it and planned out what we would have to do to it to get it in flyable shape and to be able to use it.

We wanted to start our own airplane business, and we were very anxious to get this airplane in the air, so we spent all of our spare time outside of school hours planning our use of this airplane.

Q. Now, when did you first start any work on the [248] airplane?

(Testimony of George C. Finn.)

A. It was approximately September of 1951.

Q. But you had planned it out before that?

A. We had inspected the fuel system and we had gone over the airplane to see just what parts were required, and we were picking up parts wherever we could find them during that interim until we could get ready to rehabilitate this airplane.

Q. Did you make out a list of the specifications that the airplane required?

A. Well, we had—there was a list that we went by for putting it in top flying shape, which was designated by the Civil Aeronautics Administration. We went through that list as a further necessary requirement, and then we knew from our own experience, in just examining the plane, that we were going to have to change the carburetors and the plugs, and these engines had not run, and we were going to have to do a lot of work to get this airplane in shape. It was sunk in the ground, with the tires deflated and worn and rotted and unusable, and we knew we were going to have to take all the rusted and deteriorated parts off and replace them, because the CAA would not let us fly it until it reached a certain technical requirement.

Q. In making the examination, were you in and about the airplane for some time before you came to Burbank, Mr. [249] Finn? A. Yes, sir.

Q. For what period were you in and about the airplane to make that determination?

A. From approximately May of 1951, until we flew the airplane off in October, 1951.

(Testimony of George C. Finn.)

Q. When did you first come into Burbank with the idea of furthering your stated objectives?

A. With the airplane?

Q. I don't mean when did you fly the airplane in. When did you come in, in advance of the airplane, with the idea of lining up people to do the work for you?

A. Oh, that was approximately in May, in June and July. We were doing these things simultaneously. We were trying to obtain the facilities for repairing the airplane and putting it in top shape, as well as examining it and picking up parts, and we did these things together.

We inquired through various companies if they would repair it and under what terms and conditions they would repair it, and everybody we went to had different ideas. [250]

Q. Did you try and get bids on the work that you wanted to have done?

A. Yes, sir. We went to the various places, Southern California Aviation; went to Potter's. We went to Flying Tigers. We went to International. We went to Intercontinental Airways.

Q. Well, at that point, Mr. Finn, you didn't know who was going to do the work, is that right?

A. That is right.

Q. And you say you went to the Flying Tiger Line as one of the companies that you thought might be interested?

A. Yes, sir.

Q. You spoke to Mr. Duly out there?

A. That is right.

(Testimony of George C. Finn.)

Q. Then you had some negotiations with Mr. George Batchelor, who is sitting here in the courtroom? A. Yes, sir.

Q. And you had those negotiations which led up to the signing of certain documents by International Airports and the Finns, is that correct?

A. Pardon? Do I have——

Q. I said you had—— A. Yes, sir.

Mr. Blackman: Very well. Now, Mr. Clerk, will you lay before the witness International's Exhibits B, C—— [251]

The Clerk: B and C?

Mr. Blackman: I will give you a list. B, C, E, F, G, H, I. I think we can stop there.

Will you examine those, please?

Mr. Abbott: During this period I might advise the court that, as ordered, we have requested Mr. Duly be present, and he is here available for such examination as may be required.

The Court: Very well.

Do you wish to recall Mr. Duly? Was it you, Mr. Blackman, or Mr. Nelson?

Mr. Blackman: I think it was Mr. Nelson.

The Court: You wish to recall him?

Mr. Nelson: Yes, I do.

The Court: While the witness is examining all these documents, he may step down from the stand and make the examination off the stand. And Mr. Duly may be recalled.

You may step down.

(Witness temporarily excused.)

DOUGLAS DULY

a witness called on behalf of defendant Vineland Elementary School District, having been previously sworn, was recalled and testified as follows:

The Clerk: You are Mr. Douglas Duly?

The Witness: Yes. [252]

The Court: Mr. Blackman, it might save time, while this testimony is going on, if you have any other documents for the witness to examine, give them to him and have him examine them now.

Mr. Nelson: May I proceed, your Honor?

The Court: You have been sworn.

You may proceed.

Direct Examination

By Mr. Nelson:

Q. Mr. Duly, you recall yesterday you mentioned a conversation with one of the defendants Finn when they came to your establishment seeking to have the Flying Tigers do some work on the subject aircraft? A. I do.

Q. Can you give us an approximate time that that conversation took place? By that, I mean——

A. Summer of '51.

Q. Was that the only conversation that you had with the defendants Finn concerning the subject plane? A. Yes.

Q. Do you recall in that conversation making a statement to the defendants Finn concerning the value of the aircraft?

A. No discussion was made. [253]

(Testimony of Douglas Duly.)

Q. Do you recall making any statement whatsoever to the defendants Finn concerning what you think they should do with the aircraft?

A. No. We didn't discuss that point.

Q. Did you make a statement to one of the defendants Finn during that conversation that it was your opinion that the plane should be covered with gasoline and burned?

A. No, I did not.

Mr. Nelson: No further questions, your Honor.

Mr. Abbott: No cross-examination, your Honor.

The Court: Did you call his attention to the time and place of it?

Mr. Nelson: Yes, I did, your Honor. He said the summer of '51.

I might ask one further question:

Q. (By Mr. Nelson): Where did this conversation occur?

A. This conversation never occurred.

Q. Where did this conversation between you and the Finns concerning this maintenance work occur?

A. In my office at the Lockheed Air Terminal.

Q. And you did not have any conversations with defendants Finn at any other place, apparently?

A. No. When they left my office I didn't see them again.

Mr. Nelson: Thank you. [254]

The Court: Did you say anything in substance or effect of what counsel has just asked you?

The Witness: Absolutely not.

The Court: Nothing like that ever occurred?

The Witness: Absolutely not.

(Testimony of Douglas Duly.)

The Court: No such subject was mentioned, as pouring gasoline on the plane and burning it?

The Witness: Absolutely not.

The Court: Anything further?

Mr. Nelson: No. The witness may be excused. And if I may continue this, I will call the two Finns.

The Court: Yes. I suggest you remain in attendance, Mr. Duly.

Mr. Blackman: Before he leaves, may I ask him a question?

The Court: Yes, you may.

Cross-Examination

By Mr. Blackman:

Q. Mr. Duly, do you at the present time have any matters pending with the United States Government, with the United States Attorney's office here?

A. No.

Q. The Flying Tiger Line, that you know of?

A. No.

The Court: Do you have any interest, direct or indirect, [255] that you know of, in the outcome of this lawsuit?

The Witness: Absolutely no, sir.

Q. (By Mr. Blackman): Were you paid as an expert witness to appear here?

A. I have been requested to furnish my opinions on airplane value.

(Testimony of Douglas Duly.)

Q. Did you furnish a bill?

A. No bill was——

Q. I asked you have you been paid or promised anything as an expert witness?

A. I will bill for my services.

Q. You will bill for your services?

A. Yes.

The Court: Bill whom?

The Witness: The United States Government.

The Court: Anything further?

Mr. Blackman: Nothing further.

Q. (By Mr. Abbott): Mr. Duly, remain on the stand a moment, please.

What was the agreed rate of compensation for your services to be performed as an expert witness in this case? A. \$35 a day.

Q. What is your salary as an employee of the Flying Tiger Line in terms of dollars per day?

A. I am on a fixed based salary, plus commission. It [256] averages out—business is good, it goes up—averages out about \$800 a month.

Q. And have arrangements been made with your superiors to compensate the company for your loss of time at a rate of \$35 a day, as equivalent for that loss of time? A. It has.

Mr. Abbott: No further questions.

Mr. Nelson: No further questions. If we may clear this up so Mr. Duly can leave, I will call the two Finns.

The Court: Remain in attendance until you are excused.

Mr. Nelson: May I call Mr. George Finn at this time?

The Court: George Finn will resume the stand.

GEORGE C. FINN

called as a witness on behalf of defendant Vineland Elementary School District, having been previously sworn, was recalled and testified further as follows:

Direct Examination

(Continued)

By Mr. Nelson:

Q. Mr. Finn, calling your attention to the meeting with Mr. Duly, which we have just covered, did that meeting take place approximately—what date did it approximately take place?

A. Well, my recollection was sometime in May or early [257] June, 1951. And there were several meetings.

Q. You mean there was more than one meeting on this general conversation of whether or not their company would do work on this aircraft?

A. There were many of them. We were discouraged many times from doing this. The company took the view that—or, Mr. Duly took the view, they questioned whether or not we owned this airplane; that they had tried to buy it, and they were unable to buy it from Vineland School District—"How did you get it?"

We said, "We bought it and we have the registration on it. And we want to bring it in here, or

(Testimony of George C. Finn.)

somewhere where it can be brought up to the requirements, and we would like to know whether it can be done on the basis of credit or how we can make these arrangements." And we were not getting anywhere with them. They didn't go along with our thinking on the matter. And we were in the hangar one day and Mr. Duly said, "Well now, look, you might just as well pour some gasoline on that thing and burn it up, if you want my advice."

We said, "We don't want your advice on that, Mr. Duly." And we just left. That was probably our last meeting with Flying Tigers, because we felt pretty much discouraged about that.

Q. Approximately how many meetings did you have with Mr. Duly in this connection? [258]

A. Five or six.

Mr. Nelson: I have no further questions.

Cross-Examination

(Continued)

By Mr. Abbott:

Q. Mr. Finn, did you have with you, when you talked with Mr. Duly on any occasion, pictures of the airplane in suit? A. No, sir.

Q. You did have pictures with you when you talked with Mr. Batchelor of International that same summer, did you not?

A. I didn't have them with me, I don't believe, no. No. We had many conversations, and finally Mr. Batchelor asked for identification on this par-

(Testimony of George C. Finn.)

ticular plane, and it was at a subsequent date, after negotiations, that we showed him the pictures.

Q. Well, did you show the pictures to Mr. Batchelor before or after you signed these various instruments dated August 31, 1951, which have been displayed to you by counsel?

A. I believe it was after. He knew the airplane. He told me he was up at the school a couple of years or so, or a year or so before that, he went swimming up there. And he had seen the airplane at that time. So we were both talking about the same airplane, and wasn't a necessity to give him any exact identification other than the registration. [259]

Q. Now, were your conversations with Mr. Batchelor within the same two or three-month period as your conversations with Mr. Duly?

A. No. They were later. I didn't contact Mr. Batchelor until approximately September. We had no contact at all with him up to that point. It was Southern California Aviation and Potter. And there are a group of aviation repair maintenance places around Lockheed Air Terminal, and we were shopping with all of them. We had just got out of the service, and we didn't know the necessary steps to take to get into the airline business. And we just kept asking and asking and asking, and everybody we went to had a different answer and a different approach, and we tried to melt them all together to get our airplane flying.

(Testimony of George C. Finn.)

Q. In any event, you first met Mr. Batchelor in September, 1951, Mr. Finn?

A. I believe it was around that time.

Q. Now, counsel has just shown to you Defendant International's Exhibit B, an aircraft chattel mortgage; C, a note secured by a chattel mortgage; E, agreement, and each of which bears the date August 31, 1951.

A. That is approximately September.

Q. Had you talked with Mr. Batchelor before you signed those instruments, Mr. Finn?

A. Yes. [260]

Q. How long before?

A. Oh, about a week. He operated much faster than anybody else we ever talked to, and, in fact, it was quite a nice arrangement. We were very happy we discovered this man. And we went right ahead with our——

Q. How long was it after you talked with Mr. Duly that you talked with Mr. Batchelor?

A. Oh, approximately two months; June, July, August—about two months and a half.

Q. And did you do any work on the aircraft in suit during that interval?

A. Nothing more than the inspection and establishing the technical requirement to put the plane in shape. We were on the plane—we were not in a position to work on the plane while it was still subject to the school's use.

Q. You didn't do any work during that period on the aircraft, is that so?

(Testimony of George C. Finn.)

A. Only minor inspections; no changes.

Q. Now, Mr. Finn, is it true that in August, 1951, Mr. Batchelor offered you \$50,000 for the airplane, and you refused it?

A. In August, yes, sir.

Mr. Abbott: No further questions on this point.

We will want to cross-examine the witness as to his other testimony. We could do so now, or later, if the court please. [261]

The Witness: Pardon. I would like to correct that amount. My impression is \$55,000. And we refused.

The Court: Mr. Batchelor offered to buy it from you?

The Witness: Yes, sir.

The Court: That is, Mr. Batchelor of International Airports?

The Witness: Yes, sir.

The Court: \$55,000?

The Witness: Yes, sir. That is my impression of the arrangement and negotiations.

The Court: Does that conclude the Government's examination on this phase——

Mr. Abbott: On the phase——

The Court: ——relating to the conversation with the witness Duly?

Mr. Abbott: It does, your Honor.

The Court: Any further questions on this aspect of it?

Mr. Nelson: Was your brother also present at those conversations?

(Testimony of George C. Finn.)

The Witness: Yes, sir.

The Court: That is the conversation with Mr. Duly?

Mr. Nelson: With Mr. Duly, yes, sir.

Would the Government be willing to stipulate the other brother Finn would testify to the same matter Mr. George C. Finn has testified to? [262]

Mr. Abbott: I cannot so stipulate.

Mr. Nelson: We will call Mr. Charles Finn.

The Court: Very well. You may step down.

(Witness excused.)

The Court: Mr. Charles Finn, take the stand.

CHARLES C. FINN,

a witness called on behalf of defendant Vineland Elementary School District, having been previously sworn, was recalled and testified as follows:

The Court: Have you heretofore been sworn upon the trial?

The Witness: Yes, your Honor.

The Court: Proceed.

Direct Examination

By Mr. Nelson:

Q. Mr. Finn, You have been present and heard the testimony of Mr. Duly here today, and also the testimony of your brother. Were you present at the time that you discussed this subject aircraft with Mr. Duly, and particularly for the purpose of

(Testimony of Charles C. Finn.)

attempting to get their organization to do work on the plane? A. Yes, sir.

Q. Approximately when did those conversations take [263] place?

A. Well, they were between the period of May and August.

Q. About how many conversations occurred?

A. Four or five.

Q. Were you present at the conversation referred to by your brother as having taken place in the hangar at Flying Tigers wherein this statement came out as to what you should do with the plane?

A. Yes, sir.

Q. And what was that statement?

A. The statement was that, "My advice is for you to throw gasoline on it and burn it up."

Mr. Nelson: I have no further questions.

Cross-Examination

By Mr. Abbott:

Q. Mr. Finn, in the course of that conversation you have last described, were you and your brother and Mr. Duly discussing the value of the airplane in suit?

A. We were attempting to negotiate for the repair of the airplane, which was a considerable amount, and Flying Tigers apparently didn't want to negotiate with us on that plane at all. And in the course of the conversation, Mr. Duly said that, "The best thing for you to do with that [264] airplane is throw gasoline on it and burn it up."

(Testimony of Charles C. Finn.)

Q. Now, immediately prior to his making the statement you described, you asked him on his opinion for value of the aircraft?

A. I don't recall as I did.

Q. Isn't it a fact, Mr. Finn, that what you were discussing immediately prior to that statement you have described was your relationship with the Vine-land School District and title to the aircraft and Government restrictions on the aircraft?

A. I don't know as that was a fact in that particular conversation.

Q. What is it that you said that caused him to make the statement relating to throwing gasoline on the aircraft?

A. We had been attempting all the time to get the airplane repaired. We didn't know actually the value of the plane ourselves, and it was very possible that we bought a "white elephant."

So as we went around to these other aircraft people to see what we could do about it, about putting the airplane in shape, and flying it, we have got these answers, and it is our belief that we may have bought the plane that they wanted, and seems to appear that there was a shut-down on it; that the Tigers or Slick would not repair the airplane; perhaps that they might be able to purchase it later from us. [265] We felt there was a stop on it, that they would not negotiate with us for the repair of this plane. [266]

Q. You felt there was some conspiracy in the

(Testimony of Charles C. Finn.)

industry which would prevent you from getting the airplane repaired, Mr. Finn?

A. No, sir, I didn't feel that at all. I felt that we did not know the value of the airplane. We asked the people what the value of the airplane was, and these were the answers that we got.

Q. Then was it in reply to a question relating to value that Mr. Duly said that which you have said he said relative to throwing gasoline on the airplane?

A. I can't say definitely that I asked him for the value and that he replied in that fashion. I just recall the statement that we throw gasoline on the airplane and burn it up.

Q. Within two months after that did Mr. Batchelor offer you \$55,000 for the aircraft, and did you refuse that offer?

A. Yes, within approximately that period, and we refused Mr. Batchelor's offer.

Mr. Abbott: No further questions.

The Court: Any further questions on this phase?

Mr. Nelson: No further questions.

The Court: You may step down.

Is there any occasion to require further attendance from Mr. Duly? [267]

Mr. Abbott: Your Honor, we request that he be excused.

The Court: You are excused.

Mr. Duly: I would like to clear a matter up here.

Mr. Abbott: May Mr. Duly resume the stand?

The Court: Resume the stand, Mr. Duly.

DOUGLAS DULY,

recalled as a witness on behalf of the Government, having been previously duly sworn, testified further as follows:

Direct Examination

The Court: Is this an explanation you wish to make?

The Witness: Yes. This is so hideous that I think it requires a little more time.

The Court: No comments on it. You may merely testify——

The Witness: As I testified, I am on salary and commission. A customer comes to me with an airplane——

The Court: Not what happens in usual cases. What happened in this case.

The Witness: Well, in this case, I never made that statement, and I would like to bring out why it would be impossible for me to make that statement.

The Court: That is a matter of argument, Mr. Duly.

The Witness: Regarding our company working on that airplane, some thought was given, but when credit was requested, we did not feel that we should. I can take pride in saying [268] that our company is not considered as a fast operator, and therefore, we neglected—we decided not to pursue it and work on this airplane further.

Q. (By Mr. Abbott): Well, do you have any-

(Testimony of Douglas Duly.)

thing further to bring out relative to your conversations with the two defendants Finn, Mr. Duly?

A. There was no such statement made.

Q. And did you have but one conversation with them? A. Regarding this airplane, yes.

Mr. Blackman: No further questions, your Honor.

The Court: Did either of the defendants Finn inquire of you your opinion as to the value of the plane at that time?

The Witness: No.

Mr. Blackman: Your Honor, while the witness is on the stand, may I ask him a couple of questions relative to another matter we asked him about earlier?

The Court: First, is there anything further on this subject?

Mr. Nelson: No further questions.

Cross-Examination

By Mr. Blackman:

Q. Mr. Duly, I believe you had other matters pending with the United States Attorney's office; is that right?

A. Nothing but what I discussed now.

Q. Pardon me? [269]

A. Nothing except what I discussed previously.

Q. Well, didn't you have a conversation with Mr. Batchelor, where you told him that you did have another matter with Mr. Abbott, and that is how he happened to contact you?

(Testimony of Douglas Duly.)

A. No. Regarding anything pertaining to this, no.

Q. How did Mr. Abbott happen to contact you?

A. I believe it was Mr. Miller—was it?—from Frisco. I believe Mr. Miller from the San Francisco office contacted our company, possibly through my superior, Mr. Benniger.

Q. Before that time you had nothing to do, you say, with any member of the United States Attorney's office here locally? A. No.

Q. And had never been down here? A. No.
Mr. Blackman: That is all.

Redirect Examination

By Mr. Abbott:

Q. Is Mr. Miller the regional counsel of the Department of Health, Education and Welfare at San Francisco? A. Yes, he is.

Q. Is he in any way connected with the office of the United States Attorney, if you know?

A. I identify him as legal counsel for—is it General [270] Services?

Q. Health, Education and Welfare.

A. —Health, Education and Welfare.

Mr. Abbott: No further questions.

Mr. Blackman: That is all.

The Court: You may step down, Mr. Duly, and you are excused from further attendance.

(Witness excused.)

The Court: The defendant George C. Finn will resume the stand.

GEORGE C. FINN

one of the defendants, resumed the stand, and, having been previously duly sworn, testified further as follows:

Cross-Examination
(Continued)

By Mr. Blackman:

Q. Mr. Finn, have you had an opportunity to look at the documents that I called your attention to before this last break? A. I have.

The Court: You mean prior to the time that Mr. Duly took the stand?

Mr. Blackman: Yes, your Honor.

Q. Directing your attention to International's Exhibit B, will you identify that, please? [271]

A. This is a chattel mortgage on aircraft, the aircraft in suit.

Q. That is a chattel mortgage dated August 31, 1951? A. That is right.

Q. And is that signed by yourself?

A. Yes, sir.

Q. And do you recognize your brother's signature thereon? A. Yes, that is his signature.

Mr. Blackman: We will offer Defendant's B in evidence at this time, your Honor.

Mr. Abbott: No objection, your Honor.

The Court: Received in evidence.

(The document referred to, marked Defend-

(Testimony of George C. Finn.)

ant International's Exhibit B, was received in evidence.)

Q. (By Mr. Blackman): Now, was that aircraft chattel mortgage given by you as security for the sum of \$15,000?

Mr. Abbott: Objection, your Honor. The document speaks for itself, together with the other documents.

Mr. Blackman: I will accept counsel's statement. I want to shorten the proceedings.

Q. Did you receive \$15,000 in cash?

A. Yes, sir.

Q. All right. As a result of that, did you give the chattel mortgage? [272]

A. Yes, sir. Pardon. That was a check

Q. Well, did you cash the check?

A. Yes, sir.

Q. Very well. Defendant International's Exhibit C, will you identify that, please?

A. Exhibit C is a note secured by a chattel mortgage, dated August 31, 1951, a promise to pay to International Airports at Lockheed Air Terminal \$15,000.

Q. Did you deliver that to International when you received the check? A. Yes, sir.

Mr. Blackman: I offer Exhibit C in evidence at this time.

Mr. Abbott: No objection, your Honor.

The Court: Received in evidence.

(Testimony of George C. Finn.)

(The document referred to, marked Defendant International's Exhibit C, was received in evidence.)

Q. (By Mr. Blackman): Exhibit E, Mr. Finn, will you look at that? E is the agreement.

The Court: These are all International Airports' exhibits, so designated?

Mr. Blackman: Yes, your Honor.

The Court: Unless otherwise stated?

Mr. Blackman: Yes, your Honor.

The Witness: I don't have E.

The Court: Mr. Clerk, will you assist him? [273]

The Witness: I have D and G.

The Court: Mr. Clerk, do you have International Airports' Exhibit E for identification?

The Clerk: No, I don't have it here, your Honor.

The Witness: I will check again.

The Clerk: I think it was in that group.

The Court: It is attached to the answer, but is there a separate copy of it here? Do you have a separate copy of it?

Mr. Blackman: I don't know whether we offered a separate copy or not. I thought that we did.

The Witness: Your Honor, I think there is a separate copy in our file.

The Court: The witness states that he believes he has a separate copy in his file. Do you wish him to produce it?

Mr. Blackman: Will you step down and get it?

(Testimony of George C. Finn.)

The Witness: Your Honor, that is not here. I have a copy in the briefcase.

Mr. Blackman: We will pass that for the time being, your Honor. I think we can introduce it through Mr. Batchelor.

The Court: The copy attached to the answer to the amended complaint has been marked. You can make use of it, and you may offer it in evidence.

Mr. Blackman: Thank you. We will offer the copy [274] attached to the amended complaint.

The Court: I assume you wish the witness to identify it?

Mr. Blackman: Yes, your Honor, although I believe it has been stipulated to.

The Court: As I recall, yes.

Mr. Abbott: It has been stipulated to as to genuineness and due execution.

The Court: It is stipulated it is an agreement, dated August 31, 1951, between International Airports and the defendants Finn. Is that correct?

Mr. Abbott: That is right.

The Court: Attached to the answer of International Airports, Inc.; as Exhibit A. It is received in evidence as International Airports' Exhibit E here.

(The document referred to, marked Defendant International's Exhibit E, was received in evidence.)

Q. (By Mr. Blackman): Will you look at Exhibit F, please?

(Testimony of George C. Finn.)

A. Yes, sir.

Q. Will you identify it?

A. This is a canceled check for \$15,000, with the heading of "International Airports, Inc., Hangar 2, Lockheed Air Terminal, Burbank, California," dated September 1, 1951.

Q. Very well. You testified you received the proceeds of that check? [275] A. Yes, sir.

Mr. Blackman: We offer it in evidence as International's Exhibit F.

Mr. Abbott: No objection, your Honor.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit F, was received in evidence.)

Q. (By Mr. Blackman): Exhibit G, Mr. Finn, will you look at that? A. "D" as in "dog"?

Q. "G" as in "George."

A. Oh, yes, sir.

Q. Will you identify that?

A. Yes, sir, this is a lease of aircraft, dated the 31st of August, 1951, leasing the aircraft to International Airports at Hangar 2, Lockheed Air Terminal, Burbank, California, and signed by George C. Finn and Charles C. Finn, and also the signature of Donald A. Lanham, president and lessee.

Mr. Blackman: I offer it as International's Exhibit G in evidence.

Mr. Abbott: No objection, your Honor.

The Court: Received in evidence.

(Testimony of George C. Finn.)

(The document referred to, marked Defendant International's Exhibit G, was received in evidence.) [276]

Q. (By Mr. Blackman): Will you look at Exhibit H, please? A. H?

Q. Yes. A. Yes, sir.

Q. Identify it, please.

A. Exhibit H is a supplement to a lease agreement for the lease of the subject—the aircraft in suit to International Airports.

Q. It is a copy of a supplement, is it, Mr. Finn?

A. A copy of a supplement, and refers to, I believe—it says here the blank day of September, 1951.

Q. At any rate, you identify it as a copy of the supplement? A. Yes.

Mr. Blackman: I believe the document has been stipulated to, your Honor, as genuine, and, without objection, we offer it in evidence.

Mr. Abbott: No objection.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit H, was received in evidence.)

Q. (By Mr. Blackman): Exhibit I, Mr. Finn.

A. Yes, sir.

Q. Identify it, please. [277]

A. This is a photostatic copy of a document, "Supplement to Agreement," which is the supplement to an agreement made between International

(Testimony of George C. Finn.)

Airports and the Finns, and signed by Donald A. Lanham, George C. Finn and Charles C. Finn, and it is dated the blank day of September, 1951.

Mr. Blackman: I offer it as International's Exhibit I in evidence.

Mr. Abbott: No objection.

The Court: Received in evidence.

(The document referred to, marked Defendant International's Exhibit I, was received in evidence.)

Q. (By Mr. Blackman): Exhibit J.

A. Yes, sir.

Q. Identify it, please.

A. Exhibit J appears to be a copy of Exhibit C.

Q. A copy of International's Exhibit C?

A. Yes, sir.

Q. I believe there were three documents introduced under Exhibit J, including the letters dated May 18, 1952, and 19th and 20th.

A. Pardon me. Well, the first one is a copy of Exhibit C, and the back thereof.

Q. Yes?

A. And the next document is a letter dated May 18, to International Airports, stating acknowledgment of [278] possession of aircraft N111H. It is dated May 18, 1952.

Q. Are those your signatures on the document?

A. Yes, sir.

Q. Yours and your brother's?

A. Yes, sir.

(Testimony of George C. Finn.)

Mr. Blackman: I offer it as Exhibit J in evidence. The other represents a duplication, your Honor, of the note. However, it was attached as a part of the certification.

The Witness: Pardon me. There are two others.

Mr. Blackman: I am willing it be removed by the clerk.

The Court: There are two other items there, are there not?

The Witness: Yes, sir. There is another letter, dated May 19, 1952, with markings on it changing a time from 7:00 to 11:00 p.m., and it is signed by George and Charles Finn, and it purports to acknowledge possession of aircraft N111H. And there is a third, a certificate from J. Ostly, the County Clerk of the Superior Court——

Q. (By Mr. Blackman): You don't have to read that, Mr. Finn. That is a formal certificate attached to the certification.

A. And the third, the last document, is a letter dated May 20, 1952, to International Airports, purportedly acknowledging possession of aircraft N111H, and it is in writing, stating "Extended 21 of May until 11:00 p.m.," which is a [279] change from 9:00 p.m., and it is initialed "G.C.F.," which are my initials, and it is signed by George C. Finn and Charles C. Finn.

Mr. Blackman: I offer it as one exhibit, Exhibit J, your Honor, in evidence.

Mr. Abbott: No objection.

The Court: Received in evidence.

(Testimony of George C. Finn.)

(The documents referred to, marked Defendant International's Exhibit J, were received in evidence.)

Mr. Blackman: Now, Mr. Clerk, will you lay before the witness International's Exhibit T for identification?

The Clerk: No, sir, I don't have it. The last I saw it, Mr. Abbott had it.

Do you still have it, Mr. Abbott?

(A document was handed to the witness.)

The Court: Have you now examined Airport's Exhibit T, for identification, Mr. Finn?

The Witness: T—I examined this before, your Honor.

The Court: Yes.

Q. (By Mr. Blackman): Now, the document which you state that you saw in Washington, which was in the same general form as International's Exhibit T, but which contained the words "no formal bill of sale"—

The Court: Now, you are saying it contained. He said it may contain. [280]

Mr. Blackman: I am sorry.

The Court: That is the vice of reciting testimony.

Q. (By Mr. Blackman): Do you recall what serial number that document had on it?

A. It was a form 1316, recalling the form. I do not recall the serial number.

(Testimony of George C. Finn.)

The Court: You mean the serial number of the airplane?

The Witness: The serial number of the airplane. To my best recollection, we were discussing this——

The Court: No, the question is: Do you recall what the serial number was?

The Witness: No, sir, I do not recall the serial number.

Q. (By Mr. Blackman): Was it the same serial number that appears on International's Exhibit T for identification?

The Court: Does it appear to be?

The Witness: It appears to be.

Q. (By Mr. Blackman): Now, laying that aside for the moment, Mr. Finn, and directing your attention to the transaction which you had with International on or about August 31, 1951, did you have a conversation with Mr. Batchelor at that time with respect to the ownership of this airplane?

A. Yes, sir.

Q. And where did that take place?

A. It took place in the Lockheed Air Terminal; the first conversation. I had another conversation with him, [281] more particularly in respect to the airplane, in his office.

Q. Now, with respect to the first conversation, who was present?

A. Mr. Blackman, you were present, and Mr. Batchelor, and my brother and I.

Q. Do you recall what was said with respect to

(Testimony of George C. Finn.)

your ownership of the airplane? A. Yes, sir.

Q. Will you state what was said?

A. In my recollection, that Mr. Batchelor purported to want to buy the plane and wanted to know if we owned it; offered to buy the plane, and wanted to know if we owned it. I said, "We most certainly do own it, and I have a registration certificate to prove it."

He said, "Well, can you show that to me?"

And I said, "I certainly can."

And I had it in my wallet, and I took out the registration certificate for airplane N111H and showed it to him and said, "If I didn't own it, I couldn't get this and I couldn't fly it, so this is my ownership."

Q. By "this," you are referring to the registration certificate, a copy of which has been introduced in evidence as a part of International's Exhibit A?

A. Yes, sir.

Q. At that time or at any time in connection with this [282] transaction up until the time that you received this \$15,000, had you ever discussed anything about restrictions on the title of Vineland School District with Mr. Batchelor?

A. No, sir. I didn't discuss any restrictions at all. I mean, I made the statement that I owned the airplane and it was mine and I could do business with it, and I stayed within those limits.

(Testimony of George C. Finn.)

Q. The subject of restrictions upon use or title of Vineland, was that ever discussed between you and Mr. Batchelor?

A. The title—Pardon?

Q. The use or title of that airplane, was that ever the subject between you and Mr. Batchelor?

A. It was a question. Mr. Batchelor said, "Well, how did you get that airplane from the school?"

I said, "I bought it from the school."

He said, "Well, how come?" He said, "I was up looking at it a year or so ago, and they didn't want to sell it."

"Well," I said, "Mr. Batchelor, that is our arrangements with the school, and I own the plane, and you can check on it, and if you are satisfied, we can do business."

Q. But to get directly to my question, was the subject of restrictions ever discussed between you and Mr. Batchelor? A. No, sir.

The Court: By "restrictions," you mean restrictions upon [283] the use or title of the airplane?

The Witness: Yes, sir.

The Court: Did you so understand?

The Witness: Yes, sir.

The Court: You so understand the question?

The Witness: Yes, sir. I mean, no restrictions at all were discussed.

Mr. Blackman: Mr. Clerk, hand the witness Defendants' Exhibit B, please?

(The document was handed to the witness.)

(Testimony of George C. Finn.)

Q. (By Mr. Blackman): Mr. Finn, will you turn to paragraph 8 of that exhibit?

A. 8, beginning, "Said mortgagee hereby declares and warrants"—

Mr. Blackman: I am sorry. I misled you.

Mr. Clerk, I am thinking about the agreement of August 31st, which is International's Exhibit E in evidence.

The Clerk: Exhibit E?

Mr. Blackman: I guess that is the one that is attached to the answer.

The Clerk: I have it here.

(The document was handed to the [284] witness.)

Q. (By Mr. Blackman): Do you see paragraph 8 there? A. Yes, sir.

Q. And that paragraph recites,

"The Finns warrant that they are the sole owners of said aircraft, free from any or all liens or encumbrances, and furnish International herewith a copy of their Certificate of Registration of said aircraft, authenticated by the Civil Aeronautics Administration."

Did you at the time you executed that agreement, hand Mr. Batchelor a copy of your Certificate of Registration? A. Yes, sir.

Q. And your chattel mortgage, which is Defendant International's Exhibit B in evidence recites,

(Testimony of George C. Finn.)

“Said mortgagor hereby declares and hereby warrants to said Mortgagee that he is the absolute owner of the legal and beneficial title to the said aircraft and in possession thereof, and that the same is free and clear of all liens, encumbrances, and adverse claims whatsoever.”

Was that statement, to your knowledge, the best of your knowledge, at that particular time true?

A. Yes, sir.

Mr. Abbott: I will object to that and move that the answer be stricken. [285]

The Court: The motion is granted.

Mr. Abbott: Conclusion of the witness as nature of intent he had.

The Court: Sustained. The jury is instructed to disregard it.

Q. (By Mr. Blackman): Did you know of any adverse claims on the airplane at that time?

A. No, sir.

Mr. Abbott: Objection. The witness must have been aware of the nature of the claim of the Government, whatever it may have been at that time. He was also——

The Court: Now, how is the state of mind material here? The airport's state of mind might be material on the issue of estoppel.

Mr. Blackman: Well, your Honor, if he made certain representations which International relied upon, and made them in good faith——

(Testimony of George C. Finn.)

The Court: Well, whether he did or not would be immaterial here, would it not, Mr. Blackman? The question would be whether or not International acted in good faith; not whether this witness acted in good faith. I am not suggesting one way or another, whether he did or did not. It is immaterial whether he did or not, is it not?

Mr. Blackman: I think your Honor is correct.

The Court: Sustained. [286]

Q. (By Mr. Blackman): Now, Mr. Finn, in these conversations that you had with Mr. Batchelor, did you tell him that you had obtained a bill of sale to the aircraft from the Vineland School District? A. Yes, sir.

The Court: Unless there is some charge of bad faith on the part of the defendants Finn. Is there any charge of bad faith on their part?

Mr. Blackman: I know of none, your Honor.

The Court: I am not aware of any.

Mr. Abbott: Well, your Honor, on that point, the Government will simply present what evidence it has, and then——

The Court: The good faith or bad faith of the defendants Finn is not in issue, is it?

Mr. Abbott: If the court requires an answer, I will give a candid answer to it.

The Court: If it is in issue, then your objection should be overruled and this defendant should state what he honestly believed and what he felt and what he thought—his state of mind.

(Testimony of George C. Finn.)

Mr. Abbott: At the time that he had these negotiations with International, your Honor, we do have reservations as to his mental state.

The Court: I didn't ask you for reservations. Is it [287] in issue?

Mr. Abbott: His mental state at all times from February 28th to the present time is in issue.

The Court: Then you should withdraw your objection to the question. The ruling will be reversed, and the witness may answer. You may inquire as to the defendant's state of mind in view of the Government counsel's statement.

Q. (By Mr. Blackman): Mr. Finn, I will put the question to you I did a few minutes ago.

At the time you executed the chattel mortgage, which bears the following statement:

"Said Mortgagor hereby declares and hereby warrants to said Mortgagee that he is the absolute owner of the legal and beneficial title to the said aircraft and in possession thereof, and that the same is free and clear of all liens, encumbrances, and adverse claims whatsoever."

Did you honestly believe that statement to be true?

A. I wouldn't have made it if I hadn't believed it.

The Court: Your answer is yes?

The Witness: Yes, sir.

Q. (By Mr. Blackman): Now, going back to the airplane, which I think we still left sitting

(Testimony of George C. Finn.)

around Bakersfield, when was it first removed from the Sunset School grounds?

The Court: Are you going to another subject now? [288]

Mr. Blackman: Yes, sir.

The Court: Have you finished inquiring into his state of mind?

Mr. Blackman: Yes, sir.

The Court: This might be a convenient time to interrupt.

You are excused now for five minutes, ladies and gentlemen of the jury, subject to the usual admonition.

We will recess for five minutes.

(Short recess.)

The Court: Let the record show the jury are present.

You may proceed.

Mr. Blackman: Thank you, your Honor.

The Court: Mr. George Finn, will you resume the stand?

Q. (By Mr. Blackman): We were about to get into another subject. Before we do, I would like to go back to Burbank and these conversations that you had with Mr. Batchelor on about August 31, 1951. I have asked you about restrictions, and I also want to ask you whether or not during any time that you talked to Mr. Batchelor that you ever mentioned a War Assets Administration Form 65 agreement? A. No, sir.

(Testimony of George C. Finn.)

Q. And did you ever hear that subject mentioned in Mr. Batcherlor's presence?

A. No, sir.

Q. As a matter of fact, I asked you that question just [289] before the court started, during the recess, didn't I? A. Yes, sir, I think——

Q. You gave me the same answer, didn't you?

A. I have to go on back on the record and——

Mr. Abbott: That is not proper cross-examination.

Mr. Blackman: It is foundational. Just that one question. And that is the foundation for the——

Mr. Abbott: What counsel asked outside of court——

The Court: Self-serving.

Mr. Blackman: Very well.

Q. (By Mr. Blackman): Mr. Finn, with the exception of what I may have asked you a couple of minutes before court started here——

The Court: This afternoon?

Mr. Blackman: This afternoon.

The Court: Prior to the conclusion of this last recess?

Mr. Blackman: Yes, your Honor.

Q. (By Mr. Blackman): ——have I ever discussed with you the facts of your trip to Washington, or any of the matters that you may have discussed back there? A. No, sir.

Q. As a matter of fact, prior to this trial the Finns have been engaged in some rather heated

(Testimony of George C. Finn.)

litigation against International, and vice versa, isn't that true? A. That is correct. [290]

Q. And that litigation is still pending between us, isn't it? A. Yes. [291]

Q. All right. Now, let's go up to where the airplane was located before it came down to Burbank, and I will ask you whether or not you accomplished certain work necessary to get the airplane ready for flight. A. Yes, sir.

Q. Where was that work accomplished?

A. It was accomplished at Sunset School, the Vineland School District, on their grounds.

Q. Now, was there a period there in the summer when classes were not held in the airplane?

A. Yes, sir.

Q. Was that during the summer vacation?

A. Yes, sir.

Q. Which ended sometime after August 31, 1951?

A. As I recall, that is correct. The classroom was not made available for the next season. We had to get it out of there.

Q. And during that period were you working on the airplane? A. Yes, sir.

Q. Did you fly the airplane away from the Sunset School to some other point before you brought it to Burbank? A. Yes, sir.

Q. Where?

A. The Kern County Airport. [292]

Q. Do you know how long it was there?

A. One day.

(Testimony of George C. Fimm.)

Q. Did you have to get any permission from the Civil Aeronautics Administration to move the airplane from Sunset to the Kern County Airport?

A. Yes, sir.

Mr. Abbott: Object, your Honor. That is wholly immaterial because anytime an airplane is flown there has to be a clearance as to safety.

The Court: May it be stipulated that before any airplane is flown in the United States, the continental United States, at any time such clearance must be secured?

Mr. Blackman: Yes, sir, your Honor, I will so stipulate.

The Court: All regularly scheduled airplanes must get clearance before they fly.

Mr. Blackman: And the movement of this airplane followed the regular course of business, so far as that is concerned.

The Court: The presumption is that the law was followed unless there is evidence to show the contrary.

Are you gentlemen able to so stipulate?

Mr. Abbott: We will stipulate that a clearance was granted before the airplane was flown.

The Court: Secured from whom?

Mr. Abbott: Secured from the Civil Aeronautics Authority, [293] permitting flight under restricted conditions.

The Court: And is the jury to understand that in the continental United States before any air-

(Testimony of George C. Finn.)

plane is flown, commercial or private, there must be a clearance obtained from the Civil Aeronautics Authority?

Mr. Abbott: So stipulated, your Honor.

Mr. Blackman: So stipulated, your Honor.

Mr. Nelson: So stipulated.

Mr. Blackman: Your witness.

Mr. Nelson: I have no questions, your Honor.

Cross-Examination

By Mr. Abbott:

Q. Mr. Finn, you have discussed a series of conferences in Washington and the District of Columbia in about the month of April, 1951. Calling your attention to your first conference with Mr. Bradley of the Federal Security Agency, were you talking about several airplanes on that occasion, or about one airplane?

A. I was talking about any school airplane.

Q. Did you at any time in the conversation with Mr. Bradley identify a particular airplane that you sought to have released from Government restrictions?

A. Yes, sir, I did.

Q. Will you describe, in particular, that airplane? [294]

A. Well, I referred to an aircraft at the Vineland School that we had rehabilitated.

Q. Now, Mr. Finn, isn't it a fact that you have received from the Vineland Elementary School District two bills of sale for two separate C-46As?

(Testimony of George C. Finn.)

A. Yes, sir.

Mr. Nelson: I am going to object to that line of testimony as to any other aircraft than the one in suit.

Mr. Abbott: Your Honor, I think I can assure you——

Mr. Nelson: As irrelevant and incompetent at this time.

The Court: What is the purpose?

Mr. Abbott: If the court will bear with me, I think the purpose will be apparent. It has a direct bearing on the transaction.

The Court: Objection overruled. The evidence will be received subject to a motion to strike, and if so advised.

Mr. Abbott: Madam Reporter, will you read the last question?

(The question and answer were read.)

The Witness: Yes, sir.

Q. (By Mr. Abbott): What was the serial number of the C-46A to which you received a bill of sale, which is not the airplane in suit?

A. 9-6563.

Q. Did you discuss that airplane with Mr. Bradley or any [295] other representatives of the Federal Security Agency in April of 1951?

A. Yes, sir.

Q. Did you also discuss the airplane in suit?

A. Yes, sir, I believe I did, on the bill of sale.

Q. Now, did you show to Mr. Bradley certain

(Testimony of George C. Finn.)

photographs of the C-46? A. Yes, sir.

Q. And did you show to Mr. Bradley photographs of the C-46 involved in this action, or the other C-46?

A. By the other one you mean 3936, or 9-6563?

Q. Did you show to him any photograph of the C-46 in this action, 42-3645, or the other C-46 for which you received a bill of sale?

A. The other C-46.

Q. You did not show him any photograph of this C-46 in suit here, did you?

A. Not that I recall, no, sir. I don't think I had any photographs.

Mr. Abbott: Mr. Clerk, will you place before the witness International's Exhibit T, please.

The Clerk: He has it here. Exhibit T (indicating).

The Witness: Yes, sir.

Q. (By Mr. Abbott): Mr. Finn, can you tell from an inspection of International's Exhibit T, what particular aircraft [296] that document refers to?

A. I don't see any number on here yet, or any identification.

Q. Now, you have seen this document on several occasions prior to the trial of this cause, haven't you, Mr. Finn? A. Pardon?

Q. You have seen International's Exhibit T on several occasions prior to the trial of this case, haven't you?

(Testimony of George C. Finn.)

A. No, sir, only in Washington.

Q. Yes. Now, do you recall the conversation which led to the inspection of that document?

A. I wanted to see all of the documents in the file of the Vineland School District, if I remember correctly, and they turned these files over to me, and so I examined it right there in the office.

Q. And International's T was a document in that file, wasn't it?

A. I believe it was; I believe, yes, sir.

Q. And in just the form you are viewing it now; isn't that correct?

A. To the best of my recollection, yes.

Q. Now, Mr. Finn, you had ascertained that the aircraft in suit was acquired by the Vineland School District in 1948—correction—in 1946 before you went to Washington, [297] hadn't you?

A. Not exactly. I didn't know when they acquired this airplane. I knew they had acquired it, but I didn't have any documents. The school didn't have any documents. They had all burned up in a fire.

Q. Well, in any event, didn't you recognize International's T, when you saw it in Washington, as relating to the other C-46, not involved in this suit?

A. No, I didn't recognize it at all. I just said—this is in fact what I remember was a statement of "No formal title will be issued," or some such document of that kind.

This looks to me like a Form 1316, and I still can't find on it whether it refers to any particular

(Testimony of George C. Finn.)

airplane. It says "1 C-46 Curtiss Commando Aircraft, \$200." I don't see any identification, to know if there is any identification here. I mean, I don't see any.

Q. How many C-46s were there at Vineland, when you were there, Mr. Finn, prior to February 28, 1951?

A. There were two.

Q. And does International's T refer to the aircraft in suit?

A. There is no reference here. I mean, this document I saw, or a like document, in Washington, and I do not see any identification here that places this with that particular [298] airplane, on this document.

Q. Well, you see the indication, "Vineland School District, Route 6, Box 7, Bakersfield, California," in the upper left-hand corner, do you not?

A. Yes, sir.

Q. And the date "3-18-48," on the face of the document?

A. Yes, sir.

Q. And when you inspected that in Washington, didn't you form the opinion that this document referred to the other C-46?

A. We didn't—no, sir, we didn't go into it that closely. We first went into the fact there was a 1316 agreement, and we did go into the fact that there was no identification on any bill of sale.

If I remember correctly, the way we could identify any particular airplane was through this letter, this Heddlestone arrangement, that they said, "We have this day sent a check," and I believe one of

(Testimony of George C. Finn.)

the questions was that there weren't any identifications to go by, and it was imposed upon me to prove my registration chain of title, and identify the airplane.

Q. Well, in that process, the first airplane that you registered was the airplane which is not involved in this suit; isn't that right?

A. That is correct. [299]

Q. And in your conference with the officials of Federal Security Agency, which you have described, you referred to "my airplane" on many occasions, did you not?

A. Yes, sir.

Q. Using the singular term "airplane"?

A. Yes, sir. I didn't have any other airplane. Let's see. At that time—yes, sir, I did.

Q. And you showed pictures of the airplane which is not in suit, did you not?

A. Yes, sir.

Q. Did those pictures portray the condition of the aircraft, as it then existed?

A. No, sir.

Q. What time were they taken? What date?

A. Approximately, oh, sometime in 1950.

Q. Will you describe, briefly, what the pictures portrayed as to the condition of the aircraft?

A. The pictures portrayed a hull, an airplane that I rebuilt.

Q. And there were no engines on the aircraft as shown in the picture, were there?

A. No, sir.

Mr. Nelson: If the court please, I am going to object at this time to this entire line of questioning

(Testimony of George C. Finn.)

as to what pictures he showed, or anything of that nature, that does not [300] touch upon the conversations which he had back there, which is the only thing in direct evidence. This all seems to be incompetent, irrelevant and immaterial, and has nothing to do with the aircraft in suit.

Mr. Abbott: If it is not apparent, I will be glad to point out the materiality.

The Court: Overruled.

Q. (By Mr. Abbott): Now, in the course of your conversation with the employees of the Federal Security Agency, you were shown the copy of the Form 65 which the Vineland Elementary School had executed, were you not? A. Yes, sir.

Q. And you——

The Court: That is an exhibit, Plaintiff's Exhibit 1?

Mr. Abbott: Plaintiff's Exhibit 1.

The Court: Please refer to them by exhibit numbers.

Q. (By Mr. Abbott): And you and they went over its terms very carefully, did you not?

A. The agreement? Yes, sir, in respect to the regulations.

Q. And they pointed out, among other things, that the first sentence of paragraph 7 of Plaintiff's Exhibit 1, the Form 65 agreement, provided, "That all acquired property when unfit for the above purposes will be sold only as scrap"? That was one of the provisions discussed, was it not, Mr. [301] Finn?

(Testimony of George C. Finn.)

A. No, sir. That provision was not discussed particularly. That was a part, I think, that fitted in with some of the regulations. The provision that we discussed particularly was that it will be reduced to its basic material content.

Q. Well, did you see the first sentence of paragraph 7? A. Yes, sir.

The Court: What did that phrase mean to you, "reduced to its basic material content,"—scrap it?

The Witness: To me, your Honor, that meant all the iron, and aluminum, and copper, or whatever basic material components went up to make the total airplane.

The Court: In other words, the basic material content of the airplane was metal, was it not?

The Witness: Yes, sir; right down to the ingots.

The Court: Then the phrase "reduce it to its basic material content" means to reduce it to metal?

The Witness: Yes, sir.

The Court: That means scrap, doesn't it?

The Witness: No, sir, there is a difference.

The Court: What does it mean to you?

The Witness: It meant to me that this was smelted down to come out as bars of metal of different composition, aluminum, iron, steel, copper, and whatever went into the airplane [302] was smelted down to be the basic material content.

The Court: Well, en route to that state, you would scrap it first, wouldn't you?

The Witness: No, sir.

The Court: You would scrap the plane and

(Testimony of George C. Finn.)

reduce the metal to its basic content, that is, the aluminum portion would be melted down, and then placed in the form of aluminum ingots; is that your notion?

The Witness: That is basic material content, but you could first, on the way to that stage, you could declare it scrap, and that becomes the classification rather than a condition of the airplane. And the question was whether or not this basic material content problem had to be solved, or whether the airplanes could be disposed of as a classification.

The Court: My question was, in reducing an airplane to its Basic material content, it would be necessary to scrap it first, wouldn't it, to physically take it and dismantle it?

The Witness: It would be necessary to physically smash it up, and put the small pieces into the furnace.

Q. (By Mr. Abbott): Mr. Finn, you also discussed with the Federal Security Agency employees paragraph 2 of Plaintiff's Exhibit 1, the Form 65 agreement, which provides that the property to be acquired hereunder is for the sole use of a tax-supported institution for instructional purposes, did you [303] not?

A. We didn't get into that problem, because that was the same as all the other regulations. We only discussed the restrictions, that is, the scrap-ping, or the warranty clause of the agreement, that called upon the reducing of it to its basic material

(Testimony of George C. Finn.)

content, so that it wouldn't be anything except metal. And that was the concern I had in acquiring the plane to fly; that if I had to do that regardless of any other conditions, what I would have would be metal.

Q. Mr. Finn, will you tell us a little bit more about the condition of the airplane shown or displayed by the pictures which you showed to the F.S.A., the Federal Security Agency's employees?

The Court: Was that a picture of the airplane in suit?

Mr. Abbott: No, your Honor. I think the testimony shows that it was of another airplane.

The Court: Is that correct?

The Witness: Yes, sir.

The Court: In other words, you did not show the officials a photograph of the airplane in suit, but you showed them a photograph of another airplane?

The Witness: Yes, sir.

The Court: Which you owned?

The Witness: Yes, sir.

The Court: Now, do you understand the question? [304]

The Witness: Yes, sir.

The Court: You may answer it.

The Witness: The condition of the airplane was a hulk, with no engines, flat on its belly on the airport.

Q. (By Mr. Abbott): And most, if not all of

(Testimony of George C. Finn.)

those circumstances, were apparent from the photograph, weren't they? A. Yes, sir.

Q. As a matter of fact, you paid a total of \$300 to the Vineland Elementary School for that airplane, did you not?

The Court: Which airplane?

Mr. Abbott: The airplane shown in the photograph.

The Court: Which is not the airplane in suit?

Mr. Abbott: Which is not the airplane in suit.

Mr. Nelson: I am going to renew the objection and move the whole testimony be stricken as not being relevant to this action.

The Court: Overruled. The motion is denied. Answer the question. I suggest you reframe it.

The Witness: No, that was for the plane and some junk that was there, I think some propellers in it, but to all intents and purposes, about \$300 for this airplane hulk.

Q. (By Mr. Abbott): In any event, you got the airplane and perhaps some other things also, is that correct? A. Yes, sir. [305]

Q. In the course of your conversations at Washington, Mr. Finn, that you have described, in the month of April, 1951, did you use the term "scrap warranty"? A. I believe I did.

Q. And by "scrap warranty," did you mean paragraph 7 of Plaintiff's Exhibit 1, the Form 65 agreement?

A. No, sir, I didn't know what I meant by "scrap warranty," and neither did the Govern-

(Testimony of George C. Finn.)

ment's official. That is what we were discussing, what was this thing called "scrap warranty." And I brought out the regulations, and they brought out the agreement, and we sat down to determine just what was a scrap warranty, and what effect it had.

Q. Well, wasn't the term "scrap warranty" used by you as a shorthand way of referring to the restrictions that were being discussed?

A. No, sir, it was not. It was used as: What was a scrap warranty. That was my problem. If the plane had to be scrapped, and it was to be warranted to be scrapped, just what did such a warranty constitute, and when was it to be done, and how?

I couldn't get any information from the Government officials, so I went to the Law Library, and dug into the regulations to find out what they meant by "scrap warranty."

Q. Mr. Finn, on the occasion of your first meeting with Mr. Bradley, did you tell him that you were there to secure [306] from him a bill of sale to the aircraft you described to him on that occasion?

A. No, sir.

Q. Did you tell Mr. Bradley that you would pay two or three thousand dollars to the Government if permitted to have a bill of sale? A. No, sir.

Q. Isn't it true, Mr. Finn, that on the occasion of your second meeting you had with Mr. Bradley, when there were also present Mr. Davidson, Mr. Hilliard,—

A. Pardon. Mr. Davis. No Davidson. I don't recall a Davidson.

(Testimony of George C. Finn.)

Q. There was a gentlemen there by the name of Davis?

A. Davis, I believe, and Heller, H-e-l-l-e-r.

Q. What was Davis' occupation, if you know?

A. He was the counsel for the Federal Security Agency.

Q. Who else was present at that meeting?

A. There was Mr. Davis, Mr. Heller, Mr. Bradley of the Federal Security Agency, and Mr. Howard and Miss Margaret O'Neil of the Civil Aeronautics Administration, and I was there.

Q. Isn't it true, Mr. Finn, that at the opening of the meeting Mr. Bradley addressed the group, and stated to all concerned that you had applied to the Federal Security Agency for a bill of sale? [307]

A. No, sir, I do not recall that.

Q. Isn't it true that you engaged in a lengthy debate with Mr. Hilliard, and with Mr. Davidson, or Davis, as he is known to you, regarding the validity of the Form 65 agreement, Plaintiff's Exhibit 1?

A. Yes, sir.

Q. Isn't it true that in the course of that debate, and throughout its course, each of those gentlemen, Messrs. Hilliard and Davidson, told you that the Form 65 agreement, Plaintiff's Exhibit 1, was valid and would be enforced?

A. No, sir.

Q. Isn't it true, Mr. Finn, that at the end of that meeting you were told by Mr. Hilliard that the decisions to be made in this file, if any were to be made, would have to come from the Administrator, because only he could change the Government's policy, and that you should apply to him if you

(Testimony of George C. Finn.)

desired some change in policy? A. No, sir.

Q. Isn't it true that in the course of that meeting, Mr. Bradley outlined to you the authority within the Federal Security Agency, and pointed out that he had no authority to release restrictions upon the title, use or resale of aircraft?

A. No, sir.

Q. Isn't it true, Mr. Finn, that Mr. Bradley told you [308] that the long-standing policy of the Department, the Federal Security Agency, was to make aircraft, when they became surplus to the needs of the school available to the military establishment, or at least, that had been their policy since the Korean War?

A. Yes, sir. I believe he did make that statement.

Q. And he told you that absent some instructions from his superior, he would have to adhere to that policy, didn't he?

A. No, sir, I don't believe he said that, because I went to the military myself, and asked them.

Q. I am not asking where you went, but what statements were made by Federal Security Agency employees in your presence.

A. No, I do not recall he made the statement he would have to adhere to anything of that kind.

Q. Did he tell you he was going to change the policy arranged between the Federal Security Agency and the Department of Defense?

A. No, sir.

(Testimony of George C. Finn.)

Q. He said nothing that would lead you to believe that he was going to alter that policy, then?

A. He didn't say that he would. He didn't say that he wouldn't.

Q. He simply told you that the policy existed?

A. Yes, sir. [309-310]

Q. (By Mr. Abbott) Did you, in fact, see the administrator of the Federal Security Agency at any time during the year 1951? A. No, sir.

Q. Did you contact any other person in the Federal Security Agency, other than those you have named in your testimony today?

A. I think not. I don't recall anybody. I saw a lot of Government officials. I don't recall now whether any of them could have been Federal Security Agency employees or not. But to my best recollection, it is these people that we are talking about here.

Q. Mr. Finn, in your direct examination you said that in the course of the meeting attended by Messrs. Heller, Davis or Davidson, Bradley and yourself, and Mr. Howard, that you brought up the topic of some policy letter sent by Federal Security Agency to the Civil Aeronautics Administration.

A. Yes, sir.

Q. Had you seen that policy letter?

A. Yes.

Q. When and where did you see it?

A. I saw it in Miss Margaret O'Neil's office of the Registrar, Civil Aeronautics Administration.

Q. What was its date, Mr. Finn? [311]

(Testimony of George C. Finn.)

A. I don't recall the date. I just don't recall it. I wish I had the letter.

Q. Are you sure, Mr. Finn, that you saw that letter before the conference of April, 1951?

A. I am quite certain I saw that on the first time I talked with the Civil Aeronautics Administration about registering the airplane.

Q. So you are certain that the letter couldn't have borne a date earlier than April, 1951, or you couldn't have discussed it at that time, is that correct?

A. I would say so.

Mr. Nelson: If your Honor please, at this moment I would like to renew my previous objection. I haven't seen any connecting it up by the Government of this original inquiry into this other C-46 aircraft; whether or not photographs were used for any other purpose except to identify the type of planes that were involved.

The Court: Motion denied. You may renew the motion, if you are so advised, upon the conclusion of the examination.

Q. (By Mr. Abbott): Mr. Finn, while counsel are looking at the documents I have just placed before them, will you state what statements you made to Mr. Bradley identifying the airplane which you were discussing with him?

A. Well, I wasn't discussing any particular airplane with him. I was discussing the scrap warranty agreements and [312] arrangement, after he had told me I must first inquire into this to find out what the regulations were.

(Testimony of George C. Finn.)

Mr. Bradley was helping me solve a problem, the way it started, and I kept asking him what should I do further, and he was very helpful. He gave me all the information, and I kept searching and searching, and I brought back in data, and asked that we have a meeting based upon what I had discovered. And this meeting took place upon that, to determine whether or not the scrap warranty situation existed.

Q. Well, in any event, getting back to the topic, Mr. Finn, did you supply him with the serial number of the airplane there you were referring to?

A. Yes, sir. I believe I did. In fact, all the documents were in the file in the War Assets—I mean, Mr. Bradley's file, and the serial numbers—there was a question as to Vineland's acquiring that plane at this particular time, I believe, and we used this file and put it out on the table to discover the acquisition of these planes by Vineland School.

Q. And actually, that file contained documents relating to both the C-46s you had seen at Vineland, didn't it?

A. Yes, sir, I believe it did.

Q. Did you ever identify——

A. No, there was another document which didn't say [313] which one is which, and I think that is this one here.

The Court: "This one here," being——

The Witness: Exhibit T.

(Testimony of George C. Finn.)

The Court: International Airports' Exhibit T?

The Witness: Yes, sir.

The Court: Have you gentlemen concluded your examination of these documents last handed to you by counsel?

Mr. Nelson: I beg your pardon, your Honor, I am sorry.

The Court: I merely inquired whether you had concluded your examination of the documents?

Mr. Nelson: Yes, we had, your Honor.

Q. (By Mr. Abbott): Mr. Finn, I am handing to the clerk—and I ask they first be marked for identification—a letter dated January 2, 1952, addressed to the Acting Deputy Administrator, Civil Aeronautics Administration, from W. T. Frazier, Property Utilization Co-ordinator, Health and Education, and ask you if you ever saw that letter?

The Court: It is marked——

The Clerk: Plaintiff's Exhibit 11 for identification.

(The document referred to was marked Plaintiff's Exhibit 11 for identification.)

The Court: Your answer?

The Witness: Pardon. I would like to read it.

The Court: Can't you answer the question without——

The Witness: After I read the letter. [314]

The Court: Very well.

Do you have to read all of it to determine whether

(Testimony of George C. Finn.)

you can answer whether you ever saw it before?

The Witness: Yes, sir. There may be two similar letters. If I can identify this one, I will

The Court: Proceed. Take all the time you want.

The Witness: The first one, your Honor, I did not see.

The Court: There is only one, as far as I know.

The Witness: There are two here, your Honor.

The Court: Does Exhibit 11 for identification comprise two letters?

Mr. Abbott: It didn't intend to be. There may be a second attached.

The Court: Please get the exhibit, Mr. Clerk. Are these impeachment documents?

Mr. Abbott: They are, your Honor.

The Clerk: There are two letters here.

The Court: Let the record show one of the letters have been removed by counsel for the Government, and Exhibit 11 for identification, now the exhibit as revised, is before you for examination.

The Witness: Your Honor, I do not recall seeing this letter.

The Court: "This letter," being a letter dated——

The Witness: January 2, 1952. [315]

Q. (By Mr. Abbott): Does that letter say, in substance, what the letter that you saw at Civil Aeronautics Administration said, Mr. Finn?

A. No, sir. There is a lot on this letter that was not on the letter that I recall seeing.

(Testimony of George C. Finn.)

Q. Mr. Finn, haven't you from time to time, and subsequent to January 2, 1952, looked through all the material on the topic of this letter in the possession of the Civil Aeronautics Administration?

A. Pardon? When was this?

Q. Subsequent to January 2, 1952?

A. This is January 2, 1952. This letter is dated—no, sir. The only time that I saw any letter, and only one letter that I recall, was in April of 1951. This letter is dated January 2, 1952. And I have never seen this.

Q. Mr. Finn, my question was, haven't you reviewed the records of this topic in the office of the Civil Aeronautics Administration in Washington after January 2, 1952?

A. No, sir. I don't think I went in there again at all on that situation. I was there in April of 1951. I did go back one time to get this registration certificate number corrected, to the Civil Aeronautics Administration, but not into the Federal Security Agency—or, just to the Civil Aeronautics Administration registration office, that I recall.

Q. Have you caused any person to make inquiry at the [316] Civil Aeronautics Administration to determine what correspondence there is relating to the subject of the letter you are viewing?

A. No, sir.

Q. Plaintiff's 11 for identification?

A. Yes, sir. I asked in pretrial hearing that any policy letter, the policy letter which I saw in April be produced. This is not it.

(Testimony of George C. Finn.)

Mr. Abbott: Will you read that letter aloud, Mr. Finn, and state in what particulars it differs from the letter which you did see?

Mr. Blackman: Just a moment. To which we object as certainly calling for a witness' comparison of two written documents, and we believe that is not a proper way to get before the jury the contents of this particular letter, which he states he never saw.

The Court: Sustained on the latter objection.

Mr. Abbott: Then may I have permission to lay the foundation, and after laying the proper foundation, showing this is the only letter on the point?

The Court: You may ask him to read the letter himself. If you ask him to read the letter out loud—the letter is not in evidence.

Mr. Abbott: I will be happy to comply with the court's suggestion. [317]

Q. (By Mr. Abbott): Will you please read the letter yourself and point out how it differs from the letter you saw in April, 1951?

A. I don't see where it has any similiarity. It is a wholly different set of circumstances altogether.

It states here—it asks for a 15-day period in which to check certain items of registration before any registration is granted. And I don't recall at all. And it—also, in the other letter, I don't think it asked for any time limit to do anything. As I recall, it was, "Would you please not register an airplane without approval."

(Testimony of George C. Finn.)

Q. Is the general subject matter the same, Mr. Finn?

A. No, it is not. This definitely states that, "If this 15-day period can be arranged by your office, it is believed that this Agency would be able to take appropriate action to correct the irregularity without any embarrassment to your office."

No such a situation existed in April, as I recall it.

Q. Do both the letter that you are viewing and the letter you saw in April, 1951, refer to a request by the Federal Security Agency to Civil Aeronautics Authority not to register aircraft purchased from schools for a certain period?

A. I believe that was the gist of the letter. I wish you would bring the letter so I will be able to tell you what it was, because I would like to have it. I saw it. I cannot [318] recall other than the fact that they had a policy—a kind of family arrangement between the Federal Security Agency and the Civil Aeronautics Administration, that they would not register any airplane unless the title was determined. That was essentially what it was in there, because I came in to register this title and they said, "We will have to check." And that is why we had this meeting.

Mr. Abbott: The entire correspondence on the point and lack of correspondence on the point, will be the subject of evidence on its cause, Mr. Finn.

The Witness: Pardon?

The Court: Do you have the letter?

Mr. Abbott: No, your Honor. I will produce a

(Testimony of George C. Finn.)

witness who will testify there is no letter on the topic except that one before the witness, Plaintiff's Exhibit 11.

The Court: Very well.

The Witness: Your Honor, how could I see——

The Court: You aren't here to argue the case. You are here to testify as a witness.

Q. (By Mr. Abbott): Mr. Finn, were you interviewed by special agent Richard Buxton of the FBI? A. Yes, sir.

Q. On June 7, 1952?

A. I believe I was, yes, sir.

Q. And did that interview occur in the office of Vincent [319] V. DiGeorgio in Bakersfield, California? A. Yes.

Q. Were the persons present Mr. DiGeorgio, yourself, your brother Charles Finn and Mr. Buxton of the Federal Bureau of Investigation?

A. Yes, sir.

Q. Did you, in the course of that interview, describe to Mr. Buxton the transactions in the spring of 1951, in Washington, which you have described here?

A. Pardon? What transaction are we referring to, now?

Q. Did you, describe to Mr. Buxton the conversations which you had with Mr. Bradley, Mr. Heller, Mr. Davidson in the City of Washington, D. C., in the month of April, 1951?

A. I don't think I described the conversations. I know that I referred to the meeting that we had

(Testimony of George C. Finn.)

there. And he questioned me as to whether or not the information that I had on the registration certificate was cleared through Washington, and I told him it had been.

Mr. Abbott: Will you read the pending question, Mr. Reporter?

(The question was read.)

The Witness: When was this meeting, in 1953?

Q. (By Mr. Abbott): My question relates to an interview on June 7, 1952.

A. June 7, 1952. [320]

The Court: You just testified it occurred.

The Witness: I don't—

The Court: In Bakersfield.

The Witness: I don't recall June 7, 1952. We hadn't been served by any papers by the Government—when was it, July?

Q. (By Mr. Abbott): Was there a meeting in the spring or summer of 1952, with Mr Buxton, Mr. DiGeorgio, yourself and your brother, Mr. Finn?

A. Yes, sir. I have to locate these dates as to it was a year after we had registered the airplane, more than a year after we registered the airplane—1952. Yes, sir, I had—

The Court: The question is, did you tell Mr. Buxton and those other persons about the conferences you testified to this morning that you had in Washington?

The Witness: Yes, sir. I recall—

(Testimony of George C. Finn.)

The Court: With Mr. Bradley and the others.

The Witness: Yes, sir, I recall.

Q. (By Mr. Abbott): Did you on that occasion tell that group of persons, and in particular Mr. Buxton, that in your conversations with Mr. Bradley of the Federal Security Agency, Mr. Bradley had stated that the scrap warranties would have to be met?

A. Now, I may have told him that what Mr. Bradley stated [321] before we had our meeting, but not at the meeting. The meeting was to determine whether or not the scrap warranty had to be met, and what it was.

Q. Did you tell Mr. Buxton that at the end of the meeting Mr. Bradley stated that he would have to abide by the scrap warranty regulations?

A. No, sir. I don't recall that I told him that.

Q. Did you make any statement to that effect to Mr. Buxton?

A. To that effect, I may have made the statement in respect to this Department of Defense situation which I had looked into. I went further than that, I believe. This is a little out of context as to that particular conversation with this FBI agent. I was telling him a story of what happened, and I don't know where you are fitting these questions in, because the references were made all the time. I was raising this question as to whether or not this scrap warranty had to be complied with; that was the question upon which we had the meeting, to resolve that point.

(Testimony of George C. Finn.)

Q. Did you tell Mr. Buxton at the time of the interview I have described in my prior question, that at the close of the conference between yourself, Mr. Howard, Mr. Bradley, Mr. Heller, and Mr. Davidson, Mr. Bradley had stated that he would have to abide by the scrap warranty [322] regulations?

A. I don't recall making that statement.

Q. Did you make a statement to that effect?

A. I believe I made a statement to that effect in respect to this statement that he made, that he would have to check with the Defense Department.

Q. Mr. Finn, what has the Defense Department got to do with the statement Mr. Bradley made at the close of the conference between Bradley, Heller, Davidson, Howard and yourself?

A. The essential point that he was making was we would have to clear all this with these various agencies, and I had already done that.

Q. Then did Mr. Bradley, at the close of the conference I have last described, say, in substance or effect, that he would have to abide by the scrap-warranty regulations?

A. No, sir, I don't believe he said that. I believe that——

Q. All right. Did you tell Mr. Buxton that he said that, or words to that effect?

A. I may have. I do not—only in respect to what I considered Mr. Bradley's statement in respect to this clearance, this Defense Department matter.

(Testimony of George C. Finn.)

That was all I referred to with Mr. Buxton.

Q. Was the topic of Defense Department policy discussed at the close of the conference between yourself, Howard, [323] Bradley, Heller and Davidson?

A. I don't recall whether it was at the close or at the beginning. It was within the meeting. I can't pinpoint the discussion. I know that it came up. I know that I resolved it on the grounds that I had already been to Major Dykman, of the Adjutant General's office, and asked the Air Force if they required any more C-46s, and they said they did not, and I——

Mr. Abbott: I move to strike all that. The witness is going far afield.

The Court: Motion granted. Move to something else.

Q. (By Mr. Abbott): Mr. Finn, is it true or false that you said to Mr. Buxton, in effect that at the close of the conference between Messrs. Bradley, Heller, Davidson and Howard, Mr. Bradley stated that he would have to abide by the scrap warranty regulations?

A. No, sir, I cannot say yes or no to that, true or false, as to what, in effect, I stated. I do not recall. I don't just remember the conversation.

Q. You may or may not have said that to Mr. Buxton? A. I may or may not.

Q. What was the approximate date that you first saw the Form 65 agreement, Mr. Finn?

(Testimony of George C. Finn.)

The Court: Exhibit?

Mr. Abbott: Plaintiff's Exhibit 1. [324]

The Witness: Aproximately in—it was in April, in Mr. Bradley's office.

The Court: April, what year?

The Witness: 1951.

Q. (By Mr. Abbott): In early April, was it not, Mr. Finn? A. Yes, sir.

Q. Now, calling your attention to Vineland's Exhibit B, which I will request be placed before you, an instrument entitled "Agreement," dated February 28, 1951, and in particular to page 3 of that agreement, where there are specified certain things that you and your brother were to do in consideration of the sale of the aircraft in suit to you, and in particular paragraph III, subparagraph 2, which reads:

"To pay to the District the total sum of \$5,000."

Has that sum ever been paid to the District before or after the meeting, Mr. Finn?

Mr. Blackman: Just a minute. We object to that as being incompetent, irrelevant and immaterial to any issue in this case.

The Court: Overruled.

The Witness: Pardon? Page 3?

The Court: Did you pay the \$5,000 to the Vine-land School District? [325]

The Witness: He asked me what it says in this document. I did not pay any \$5,000 to the Vine-land——

(Testimony of George C. Finn.)

Q. (By Mr. Abbott): Did you pay any money whatsoever to the Vineland School District for the purchase of the aircraft in suit?

A. No, sir, no cash money. [326]

Q. You say "cash money." Did you make any payment by check?

A. Well, I put in gas tanks, and built a small apartment, and provided a small airplane.

Q. We are coming to that, Mr. Finn. There are some other items in Roman numeral III of work that you were to do in the school district, are there not? Now, did you complete each of those items, Mr. Finn, and all of them?

A. No, sir, I didn't complete all of them.

Q. What was the approximate date that you flew the aircraft from Burbank, California, to Bakersfield, California, Mr. Finn?

The Court: From Burbank?

The Witness: From Burbank to Bakersfield?

Mr. Abbott: It is my understanding there was such a flight in approximately June of 1952, your Honor.

The Witness: I did not fly the airplane, sir.

Q. (By Mr. Abbott): Was it flown in June of 1952, from Burbank to Bakersfield, Mr. Finn?

A. Yes, sir, I believe it was.

Q. By Whom?

A. My brother and Jack Schuler.

Q. Do you recall the date of that flight?

A. I was in New York, I think. I don't recall the date. I wasn't here. As I recall—well, I don't

(Testimony of George C. Finn.)

recall it. I [327] can't give you the exact date, but I can determine it. I can ask my brother.

Q. How soon after June of 1952, did you return to California?

A. I made several trips East, and I think I came back some time in the latter part of June.

Q. Where was the aircraft in suit then?

A. It was in Bakersfield, at the Kern County Airport.

Q. How long did it remain in Bakersfield, Mr. Finn? A. Until January the 18th, 1953.

Q. Who was in possession of the aircraft from that date in late June, when you saw it, until January 18, 1953, if you know?

A. The Finns, or there is a question. It was either the Finns or it was the school, or it was the United States Government. There was quite a discussion as to who legally had it.

Q. How long were you and your brother in possession?

The Court: Are you referring to actual physical possession?

Mr. Abbott: I am, your Honor.

Q. Actual physical possession, Mr. Finn, after June of 1952?

The Court: That includes having it under your control. You don't have to be in it, but under your control. [328]

The Witness: It was under our control, subject to anything that the School District wanted to do with it upon reference to us. We put this airplane

(Testimony of George C. Finn.)

there, and nobody touched it but us, except the Marshal who came to seize it, and he didn't touch it.

Q. (By Mr. Abbott): Well, on what date was the latter occasion, when the Marshal came to seize it?

A. In September—well, the affidavit states—

The Court: What was the date, if you know?

The Witness: Well, your Honor, there were two seizures.

The Court: Just tell us what your recollection is.

The Witness: I recollect the whole thing.

The Court: What date do you recall it happened? That is what we are asking, and not what someone else said.

The Witness: Your Honor, I recall all of the times the Marshal allegedly seized the airplane.

The Court: All right. That is what you are being asked. When did he first seize it?

The Witness: When did he first seize it?

The Court: The date.

The Witness: September the 16th or 18th, 1953.

Q. (By Mr. Abbott): Had you and your brother been in possession of it continuously from June of 1952 to that date in September that you have last identified?

A. No. I believe my brother called up Mr. Giorgona [329] and said, "Now, we brought the airplane back. There is some question or controversy over it and our agreements with International, and here is the airplane. We promised we would take care of our requirements and dealings with the

(Testimony of George C. Finn.)

school, and the airplane is now here at the airport in Kern County.”

And the county counsel—I didn’t talk to him, because I didn’t fly it, I can ask my brother.

Q. Are you repeating by hearsay what someone else has told you?

A. That is what my brother told me.

Mr. Abbott: I will move to strike the testimony.

The Court: Motion granted.

The Witness: I have the knowledge of it.

Q. (By Mr. Abbott): Mr. Finn, on May 25, 1952, did you and your brother remove the aircraft in suit from the hangar of the International Airports, Inc., at Burbank, California?

A. Yes, sir.

Q. Did you use force in removing the airplane on that occasion?

A. It depends on what you mean by “force.” We took six men in there and put a tow chain on the tail end of the airplane and towed it off the International’s property.

Q. Did anyone protest? A. No, sir. [330]

Q. Were there any employees or agent of International present at that time?

A. Yes, sir.

Q. What, if anything, did they say about your removing the aircraft in that fashion?

A. Well, as I recall, I was at the tail end of the airplane, and I learned later that one of the fellows took out a pack of cigarettes and handed it to the other fellow and said, “You might just

(Testimony of George C. Finn.)

as well light up, because there isn't anything we can do," and off came the airplane.

We had a winch and a tow truck which we had rented, and a crew of men whom we had been employing to reassemble this airplane, and we just went in and took it out.

Q. What persons employed by International Airports, Inc., were present on that occasion?

A. Well, I think a fellow named Spencer or—well, there were two. One of them was, I believe, a foreman of the shop, and the other fellow was a mechanic, and these were the two men that I recall as being there at the hangar door.

This airplane was not in the hangar. This airplane was only projecting into the hangar as far as the nose section, and it was outside.

The Court: Did you ask the permission of anyone at International Airports to take possession of it?

The Witness: No, sir. [331]

The Court: You just went in with these men and took it?

The Witness: Yes, sir.

Q. (By Mr. Abbott): Did you make any statement to any of the employees of International who were present, as to what you were doing with the airplane?

A. I think I said—I was at the back of the plane. Then I went up forward, because we had to roll the wheels, and I think I made the statement that no-

(Testimony of George C. Finn.)

body better interfere with this, because this is our airplane and we are taking it.

Q. Did you have with you any weapon of any type on that occasion? A. Nothing, no, sir.

Q. Did anyone who accompanied you have any weapon of any type? A. No, sir.

Q. Was there any protest made by the employees of International?

A. As I recall, they just took it as a matter of course, and I recall this incident. The head man took a package of cigarettes out of his pocket and offered it to the other fellow, and he said, "You might just as well keep out of this and light up," and they just turned their backs, and this fellow that offered the cigarette took it out and started smoking, and I think the other fellow went over to call on a telephone. [332]

The Court: Was that before or after you made the statement they had better not interfere?

The Witness: I think that was before I made the statement. Nobody made any effort to prevent us from doing this thing. It was early in the morning, it was Sunday. There wasn't anybody around.

The Court: What were these two men doing? Did they have their backs turned to you, smoking the cigarettes, when you made the statement that nobody had better interfere with you?

The Witness: They were working at the other end of the hangar when we started to take the plane. We did not notify them that we were going to take it, because we were going to take it anyway.

(Testimony of George C. Finn.)

So, as I recall, these men came forward from the back end of the hangar as we were moving the plane, because it was caught between a building, the wing tip, and we had some difficulty getting it out of there, and they just rushed up, and I made this general statement, I believe, just offhand, regardless of whether anybody was there or not, "that nobody had better interfere, because this is our airplane, and we own it, and we are going to take it." I am inclined to make that kind of a statement in respect to this plane.

The Court: You don't need to make any explanation about that, except as you need to explain your answer.

The Witness: Now, I don't think it was as a result of [333] that statement that these fellows didn't interfere. I think it was more or less as a result of our past experience, and they just didn't want to get into any entanglement over this airplane.

The Court: Your next question.

Q. (By Mr. Abbot): Mr. Finn, you then removed the airplane to a point some distance away on the Burbank airfield, did you not?

A. Yes, sir. The answer to that first question is, no force was used.

Q. After removing the airplane to a point some distance away at the air strip at Burbank, was the airplane thereafter seized by a Marshal of the Los Angeles Municipal Court, acting pursuant to

(Testimony of George C. Finn.)

process in an action brought in the state court by International Airports against you?

Mr. Blackman: If counsel will change that word "Municipal" to "Superior," your Honor.

Mr. Abbott: Then it will be the Sheriff. I am in error.

Q. Was the airplane thereafter seized by the Sheriff of Los Angeles County? A. Yes, sir.

Q. And that was pursuant to the action of International Airports versus Finn then pending in the Superior Court of Los Angeles County? [334]

A. Yes, sir.

Q. How long did the Marshal retain possession of the airplane?

A. I believe this time he complied with the statute.

The Court: How long did it stay in his possession?

The Witness: I have to recall the statutory provision.

The Court: You don't have to give us your mental thinking. Just give us the time.

The Witness: Approximately ten days, if that is what the statute requires. He held it as long as the statute requires.

Q. (By Mr. Abbott): Then he delivered possession in your presence to representatives of International Airports, Inc.?

A. No, sir, I had left then.

Q. Your brother was present?

(Testimony of George C. Finn.)

A. Yes, sir.

Q. Did you witness any of the transactions relative to possession of the aircraft after the Sheriff turned it over to International and before it was removed from Burbank to Bakersfield?

A. No, sir.

Q. Returning for a moment to the April conferences in Washington, Mr. Finn, you have quoted Mr. Howard at some length. Isn't it true, Mr. Finn, that in the conference between yourself, Mr. Davidson, Mr. Bradley, Mr. [335] Hilliard, and Mr. Howard, Mr. Howard stated that CAA registration would have no effect upon the question of title as between yourself and the Federal Security Agency, because under the statute registration was no evidence of title?

A. Are you quoting Mr. Howard?

Q. In substance, Mr. Finn. That is the question I put to you. [336]

A. In substance, Mr. Howard said the CAA would not register the airplane unless I could prove a chain of title from the War Assets to the School.

Q. No, Mr. Finn, did he say to you the thing which I asked? Did he tell you that in substance?

The Court: Why don't you put the question again?

Mr. Abbott: I will, your Honor.

The Court: Isn't it a fact that at that time and place he said to you, in substance, the following—

Q. (By Mr. Abbott): Isn't it a fact, Mr. Finn,

(Testimony of George C. Finn.)

that at the time and place of the conference you have described in Washington, between yourself, Mr. Hilliard, Mr. Davidson, and Mr. Howard, that Mr. Howard said to you that registration of an aircraft to you by the Civil Aeronautics Administration would have no bearing upon the dispute between yourself and the Federal Security officials relative to title, and use, and scrap warranty, because registration was no evidence of title, and that title was a question to be decided by the courts?

A. In substance, no.

Q. Did he say anything like that, Mr. Finn, to you?

A. He said this, "You will have to have a chain of title before we can register the airplane for flying purposes." The question here was not whether or not I had title, but that I had to prove it, and if I could prove the title—— [337]

The Court: Are you talking about what he said to you?

The Witness: Yes, sir.

The Court: Is that what he said?

The Witness: If I could prove the title, they would register the airplane, providing the airplane wasn't in somebody else, and a condition subject to something else, a condition subject to reversement, and that was the only question I had with the CAA, would they register.

The Court: This is what Mr. Howard said?

The Witness: Mr. Howard said, "So far as registering this airplane, Mr. Finn, you will have to prove a chain of title."

(Testimony of George C. Finn.)

And I said, "If I prove the chain of title, Mr. Howard, will you register the airplane?"

"Yes, provided you prove it."

And that is why we had the meeting.

Q. (By Mr. Abbott): Mr. Finn, didn't Mr. Howard refer to the Civil Aeronautics Act? Didn't he mention that to you, Mr. Finn?

A. You mean that the CAA registration was not a certificate of title?

Q. Yes. In fact, didn't he tell you that under the Act the certificate would not resolve your dispute with the Government, or the Federal Security Agency, because a certificate of registration is not evidence of title or ownership? [338]

A. There was no dispute. I read that section myself.

The Court: You knew that part of the statute already, did you?

The Witness: Yes, sir. I wasn't questioning whether or not this would be an acceptance of title. I was questioning whether or not the registration would be granted for flying the airplane, so there wouldn't be any scrap restrictions on it.

It wasn't a question of whether or not it could be sold. It was a question of whether it could be sold as scrap, or mutilated, or what, and that is the requirement as I presented it to Mr. Howard, "I can't fly this airplane unless I get a registration on it."

Q. Then the only thing you were discussing

(Testimony of George C. Finn.)

in Washington with the representatives of the Federal Security Agency and the Civil Aeronautics Administration was whether you could fly the plane, not whether you had a right to its possession, or title to it; is that right?

A. That wasn't the only thing. I had a right to the title of it as scrap, or if I refused it, it would be basic material content. That was our question.

Then the question was, having the right to the title of it, would they allow me to register it for flying purposes, and remove the scrap restrictions, because of a policy letter initiated by the Federal Security Agency requesting the CAA [339] to back them up in that position, because a registration would remove the nonflight characteristics, and so I brought them together to find out.

Q. Now, you have testified that you yourself knew about the Civil Aeronautics Act, and had read the provision to which I referred?

A. Yes, sir.

Q. But didn't Mr. Howard also expressly refer to that in his conversations with you, Mr. Finn?

A. I do not recall that. I think it was common knowledge. We both discussed the fact of a registration being proven title. I did not, and do not now maintain that registration is proving title, but I do maintain I had to prove it to them in order to register it.

Q. We are not asking about your contentions, but just what was said to you by Mr. Howard.

A. Mr. Howard said, "Prove your chain of title, and I will register it for you."

(Testimony of George C. Finn.)

Q. Referred to the following provision at 14 C.F.R., Section 501.9:

“Any registration of aircraft shall be null and void if at the time of registration the person registering as owner was not the true and lawful owner of the aircraft.”

The Court: The question is, did he make any mention of [340] that regulation at this conference?

The Witness: Yes, I believe he did, because that is the way I went and read the regulations.

Mr. Abbott: No further questions, your Honor.

The Court: Any further examination of the witness?

Mr. Nelson: If the court please, I do not want to press the court too much on this matter, but once again I wish to renew my motion that all of this matter that came in as to the other C-46 aircraft be stricken, as it was not connected up, and we submit there was a great deal of equipment involved in the aviation program, and if it is going to be discussed, we will be here for weeks, so I move it be stricken.

Mr. Abbott: Your Honor, I am not in this case in a campaign to discredit the School District. This matter was only brought out to show the aircraft discussed at Washington.

The Court: It seems it is necessary here to illuminate the witness' testimony. Motion denied.

Any further examination of this witness? [341]

Mr. Blackman: Yes, your Honor.

(Testimony of George C. Finn.)

Cross-Examination

(Continued)

By Mr. Blackman:

Q. You have been asked about this conversation you had with Mr. Howard.

Mr. Blackman: Mr. Clerk, will you lay before the witness Defendants' Finn Exhibit K-1, please?

(The document was handed to the witness.)

Q. (By Mr. Blackman, continuing): As a part of these conversations that you had with Mr. Howard, did he deliver that letter, or any copy of that letter to you?

A. No, sir, he didn't deliver this to me.

Q. Where did that letter come from, if you know?

A. This is a letter signed by Mr. Howard in my file on Aircraft N111H, which I discovered upon asking the CAA for a complete certified copy of my file.

Q. Did Mr. Howard tell you substantially what is contained in that letter?

A. Yes, sir.

Mr. Abbott: If the court please, we will offer this handwritten statement by Mr. Howard of the Civil Aeronautics Administration as Finns' Exhibit K-1. We believe that the Government has sufficiently gone into this question of the conversation with Mr. Howard so as to make this document admissible. [342]

(Testimony of George C. Finn.)

Mr. Abbott: Your Honor, the Government went into the conversations with Mr. Howard.

The Court: Is there objection?

Mr. Abbott: There is objection.

The Court: State your objection.

Mr. Abbott: It is this: that the document is hearsay, that it is simply an opinion of law, that it is in no way related to the matters which the Government went into, which were to ask about conversations between Mr. Howard, Mr. Davidson, Mr. Hilliard and Mr. Bradley, and the Government went into those conversations with Mr. Howard only when they were gone into by counsel, over objection by the Government.

The Court: May I see the exhibit, Mr. Clerk?

(The document was handed to the court.)

The Court: Objection overruled. Received in evidence.

(The document referred to, and marked Defendants' Finn Exhibit K-1, was received in evidence.)

Q. (By Mr. Blackman): Mr. Finn, will you take a look at Exhibit K-1, in evidence now, and please read it out loud?

The Court: It speaks for itself. He does not need to read it. We can all read it, and the jury can read it at the proper time. He will not read it out loud.

Mr. Blackman: Very well.

Q. (By Mr. Blackman): Mr. Finn, you were asked by [343] counsel concerning certain items in

(Testimony of George C. Finn.)

connection with the School District contract of February 28th, 1951, Vineland's Exhibit B. You made the statement that you did not perform all of those items. Now, do you have a copy of Defendants' Exhibit B in front of you?

A. Defendants'—

The Court: That is the agreement of February 28, 1951?

Mr. Blackman: Vineland's B.

The Witness: Oh, Vineland's B, yes, sir.

Q. (By Mr. Blackman): Calling your attention to the items which counsel questioned you about on page 3, starting in with paragraph 3, can you tell us what items you did perform for the School District?

A. We delivered them an aircraft, in one.

Q. Which aircraft was that?

A. That is the C-46, 9-6563.

Q. That is paragraph sub-1 on page 3?

A. Yes. But we did not—

Q. What else?

A. But we did not conform it to all the specifications of Exhibit 8. We did as to some of them, and not as to others.

The Court: You mean all the specifications set forth in that agreement, Vineland's Exhibit B? You did not conform the aircraft, as required by Exhibit B, is that what you are [344] saying?

The Witness: Only partly. We did not pay them \$5,000.

3 says—I don't have Exhibit A, I don't believe,

(Testimony of George C. Finn.)

because it says to furnish all of the material and equipment in Exhibit A. I don't have Exhibit A. [345]

Mr. Blackman: There are some other documents that relate to this contract. Do you have it, Mr. Nelson?

Mr. Nelson: Aren't the specifications on the back of Exhibit B there, Mr. Finn?

The Witness: Not on this one, Mr. Nelson.

The Court: Apparently the exhibit is incomplete, gentlemen.

Mr. Nelson: We will certainly get those specifications before the court, your Honor.

The Court: Were there some of those that you did not furnish?

The Witness: Furnished some and didn't furnish others.

Q. (By Mr. Blackman): In general, what did those specifications relate to?

A. I do not recall. I know that there were many things we had to do, and I believe they were listed on Exhibit A. But in general, oh, they had to do with putting in gas tanks and pumps on the field, providing them with small airplanes, rehabilitating a girl's apartment that was being used for educational purposes, and supply them with equipment for machine shop or carpenter shop. And I think there were lights for the stage.

The Court: Can you tell us, as you go along, whether you did these things or not?

The Witness: We did many of them and others we didn't [346] do.

(Testimony of George C. Finn.)

The Court: Is that sufficient for your purposes?

Mr. Blackman: Yes, sufficient for the purpose, your Honor.

Q. (By Mr. Blackman): The faithful performance bond of \$2100, was that posted?

A. We posted this faithful performance bond as 10 per cent of the total price of \$2100, value considered to be \$21,000 for the plane.

Q. And did the School District ever send you any notice asking you to go ahead and comply with the other items which you stated you hadn't complied with up until the time that this suit was filed?

A. No. They extended the time. We were having some difficulty, and they were very kind to us, and went along; and we have had very fine relationships with the school, and that was the reason for it.

Q. As far as you are concerned, do you still intend to go ahead and do these things?

A. Yes, sir.

Mr. Abbott: Objection. That is wholly immaterial.

The Court: Overruled.

The Witness: Yes, sir, we will complete every agreement we ever made.

Q. (By Mr. Blackman): Mr. Finn, you have been asked [347] concerning these photographs that you exhibited back at Mr. Bradley's office. I am not clear on this, and I would like to ask you,

(Testimony of George C. Finn.)

did you, in exhibiting the photographs for one airplane, state to Mr. Bradley that these were actually photographs of the airplane in suit?

A. No, sir.

Q. Well, do I understand you to say then, now, that the photographs you exhibited were photographs of the other airplane located at Vineland School?

A. Yes, sir.

Q. And those photographs, as they were exhibited to Mr. Bradley, were they represented to be anything else other than that?

A. No, sir.

Mr. Abbott: I will object. The state of the record is only airplane was mentioned in the conversation.

The Court: That calls for his conclusion. The objection is sustained and the answer is stricken. And the jury is instructed to disregard it.

Q. (By Mr. Blackman): Did you tell Mr. Bradley that the photographs which you exhibited to him on that occasion were photographs depicting the airplane in suit?

A. No, sir.

Q. Did you tell him that they, in fact, depicted the airplane which was still located, which is still located at [348] Vineland?

A. Yes, sir.

Q. Is there any question in your mind on that point?

A. No, sir.

Q. All right. And you have expressed some difference in your mind between scrap as such and reducing an airplane to its basic material content.

(Testimony of George C. Finn.)

Will you explain to me what you mean by the word "scrap"?

Mr. Abbott: Your Honor, the word has a meaning defined by law in this connection; defined in the regulations.

The Court: Hasn't he already covered that? I understood him to say reducing it to basic material content is one step beyond scrap. Scrap, then you reduce it to its basic material content, you mean melt down the aluminum and mold it into ingots, and that.

Mr. Blackman: Yes, your Honor. I think basic material content, there is no question about, and as counsel just stated, there is a definition of the word "scrap" in the regulations.

The Court: Isn't it sufficient that, whether or not the witness understood, that meant a plane that wouldn't fly?

Mr. Blackman: Well——

The Court: Scrapped plane didn't mean a plane that would fly, to you?

The Witness: Oh, yes, sir, many planes sold as scrap that [349] fly.

The Court: I said, a scrapped plane, if it were in fact scrap, it did not mean it would fly, did it?

The Witness: Now, there is a question.

The Court: Well, I withdraw it.

Mr. Blackman: If your Honor will bear with me just a moment on this——

The Court: Let's proceed. I want to finish with this witness. I won't permit you to ask the ques-

(Testimony of George C. Finn.)

tion. I withdrew my own. Now, move on to something else.

Mr. Blackman: All right. May I ask Government counsel if he has a copy of the regulations which contains the definition of the word "scrap"? Then may I put the question?

The Court: What?

Mr. Blackman: Ask him if this is what he understood by the word "scrap." And then I will be finished with this witness.

The Court: Very well. Do you have the regulation?

Mr. Abbott: I don't have it with me.

The Court: Do you know what language is in the regulations defining scrap?

The Witness: I believe I do.

The Court: Does that conform with your understanding of it?

The Witness: Your Honor, I would like—I mean, my [350] conformity with the understanding——

The Court: Did your understanding of the term as you used it in your discussions with these people, did it conform with what was set forth in the regulations as defining scrap, or were you talking about something else and they were talking about the regulations?

The Witness: No. There was—I would have to review the regulation on that particular score.

The Court: Get the regulation. We are going to finish with this witness. Get the regulation.

(Testimony of George C. Finn.)

The Witness: Nobody knows what scrap is.

The Court: I didn't ask you that.

Put any other question you have, Mr. Blackman.

Mr. Blackman: That will finish the examination.

The Court: Anyone else have anything else of this witness?

Mr. Nelson: No questions.

Q. (By Mr. Abbott): With regard to the matters which have been inquired into by Mr. Blackman, didn't you tell Mr. Bradley that you had a bill of sale from the Vineland School District to one airplane, Mr. Finn?

A. I told him I had a bill of sale from Vineland School District to the airplane.

Q. To the airplane? A. Yes. [351]

Q. Did you ever talk about having a bill of sale to more than one airplane in discussions with Mr. Bradley? A. No, sir.

Q. And isn't it a fact that you showed to him the pictures you have described in your testimony as pictures of the airplane under discussion?

A. No, sir, it is not a fact. I did not.

The Court: Why did you show him the picture of the other airplane?

The Witness: Question of whether or not this was scrap; what constitutes scrap. Here was an airplane all torn down. Is this scrap? Does the——

The Court: That is why you showed him the picture, to inquire whether he thought the other airplane depicted in the picture was scrap?

The Witness: Whether this airplane——

(Testimony of George C. Finn.)

The Court: Which airplane?

The Witness: Depicted in the picture was a scrapped airplane upon which we could base any consideration for conformity to the scrap regulation, or did the scrap regulation exist at all; could an airplane be built up from the wing tip to a condition of flight, or what was necessary to remove any restrictions, if such existed; and what was scrap and what wasn't scrap. That was the purpose of bringing this airplane before this group. [352]

Q. (By Mr. Abbott): Isn't it a fact, Mr. Finn, that the first airplane that you registered with the Civil Aeronautics Authority was the airplane displayed by the picture which you showed to Mr. Bradley? A. That is absolutely so.

Q. And did you describe the airplane in discussions with Mr. Bradley by its serial number?

The Court: Which airplane?

Mr. Abbott: The airplane that he discussed with Mr. Bradley, whatever it may have been, your Honor.

Q. (By Mr. Abbott): Was that described by its serial number?

A. I think that came out of the records in Mr. Bradley's office, of the total file in the Vineland School District. I didn't have to offer any position there at all. He had a record.

Q. You just didn't say anything, because he had all the records?

A. That is right. We determined from his records what airplane was depicted in the pictures.

(Testimony of George C. Finn.)

Q. You did determine that?

A. I believe so.

Q. Who? You or Mr. Bradley, or both of you?

A. I think Mr. Bradley and I—I mean, we had a discussion over this. How do I recall this situation? I am not [353] sure. I am not sure as to how that came about.

Q. Mr. Finn, you have testified that you did a part but not all of the work described in paragraph III of Vineland's Exhibit B. Did you do that before or after you first saw the Form 65 in Washington? A. Afterwards.

Mr. Abbott: We now offer in evidence International's Exhibit T.

The Court: Is there an objection?

Received in evidence.

(The document referred to, and marked Defendant International's Exhibit T, was received in evidence.)

Mr. Abbott: No further questions of the witness.

Q. (By Mr. Blackman): Mr. Finn, at the time you showed these photographs to Mr. Bradley, you told him that you intended to fly your airplane, being the one in suit, did you not?

Mr. Abbott: Objection. The question is leading and assumes an erroneous state of the record.

Q. (By Mr. Blackman): During the conversation that you had with Mr. Bradley, did you tell

(Testimony of George C. Finn.)

him you wanted to register the airplane for the purpose of flying it? A. Yes, sir.

Q. And the airplane that you depicted in the photograph, being the other one located at Vineland School [354] District, was that the type of airplane that could, under any type of rehabilitation process, have been put back into flight service?

A. Yes, sir.

Q. And do you have the photographs that you showed to Mr. Bradley back there?

A. I don't know. Possibly I could locate them. I will look.

Q. And did you tell Mr. Bradley that you wanted to rehabilitate and put back into flight service the airplane that is depicted in those photographs? A. Yes, sir.

Q. And was there any question raised as to whether or not you could do that?

Mr. Abbott: I will object to the form of the question. Does counsel mean legally——

Q. (By Mr. Blackman): Was anything stated by Mr. Bradley as to whether or not you could do that?

A. Yes. He said I could do that. I would have to get a registration.

Q. He said you could do that?

A. Pardon me. It was all predicated on the fact I could prove the title and get registration, or I couldn't fly it, anyway. That was—were the questions that were raised. [355]

The Court: Is the regulation here?

Mr. Blackman: Yes, sir. At least, I have an ex-

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cerpt that defines the word "scrap." I don't have the original.

The Court: I believe the Government has brought in something.

Q. (By Mr. Blackman): Mr. Finn, Section 8304.1, subsection 4 of the regulations—we can call them Regulation 4—defines the word "scrap" as follows:

"Scrap means property that has no reasonable prospect of sale except for its basic material content."

Now, did you understand the scrap in the sense that it is stated by the regulation?

A. "Reasonable prospect of sale," yes, sir.

Q. All right. And did you understand by that that the airplane could be put into flight service and still be scrapped within the meaning of that regulation?

Mr. Abbott: Objection. That calls for a conclusion of law, pure and simple.

Mr. Blackman: Your Honor, we've been asking the witness here whether or not he understood scrap to be basic material content——

The Court: Read the question, Mr. Reporter.

(The question was read.)

The Court: If I understand your question correctly, I [356] understand you mean by that, could there be an airplane that could be flown, be regu-

(Testimony of George C. Finn.)

larly used in flight that would fall within that category.

Mr. Blackman: Yes, your Honor.

The Court: No prospect of selling it.

Mr. Blackman: No reasonable prospect of sale.

The Court: Except——

Mr. Blackman: Except for basic material content.

The Court: Objection overruled. You may answer it.

The Witness: Yes. That is what I understood it to be. And I believe I read a further regulation that stated if it was not, the airplane could be considered scrap—scrap, if it did not measure up to the Civil Aeronautics Authority requirement at the time.

The Court: If it did not measure up to the Civil Aeronautics Authority requirement at the time, no flight permit would be issued for it, would it?

The Witness: Yes, it may, if it was registered.

The Court: You mean the Civil Aeronautics Authority would permit you to fly an airplane which did not measure up to its requirements?

The Witness: Yes, sir.

Mr. Blackman: Well, your Honor, in that connection, the airplane in suit, when it was moved from the Sunset School to the Kern County Airport, and from the Kern County Airport to [357] Burbank, at no time did it comply with Civil Aeronautics Authority requirements.

(Testimony of George C. Finn.)

Q. (By Mr. Blackman): At no time did it comply with Civil Aeronautics Authority requirements, did it? A. No, sir.

Q. But the Civil Aeronautics Authority nevertheless gave you a permit to ferry it?

A. Yes, sir.

The Court: That is just a limited flight. In other words, it depends on whether you are trying to fly it commercially or not. You can fly an airplane any time, I suppose——

The Witness: If it has a registration on it.

The Court: I suppose if an airplane is in the process of overhaul at International Airports and some tools over at Burbank, or vice versa, that the Civil Aeronautics Authority would give the mechanic the authority to fly it over to the other airport, but for no other purpose.

The Witness: Only if it had a registration on it.

The Court: That is what you mean when you say an airplane could be scrap and still be a flyable plane, isn't it?

The Witness: No, sir.

The Court: You don't mean that it could still be scrap and used to transport passengers in commercial service? Is that your answer? [358]

The Witness: It could be. I mean, it depends on where you are going to use the commercial service. If you were flying the airplane in Mexico, it would be scrap according to the standards of the Civil Aeronautics Authority in this country, and it

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would be a perfectly good flyable airplane in Mexico. And an airplane that is scrap, they are being used in Mexico.

Q. (By Mr. Blackman): Did you discuss with Mr. Bradley whether or not it could be scrapped within the meaning of this regulation at the time it was actually sold by the Government, and yet still within the meaning of the regulation be rehabilitated for flight?

A. Yes. I brought the point out—there was a question of not whether or not the airplane was scrap, or whether I had to scrap it, but whether or not I would fly it and remove any restrictions on the basis of granting to me by the Government a registration—I believe that the airplane was flyable, but whether or not I could get a registration on it, in other words, to allow me to fly it, was a requirement that had to be cleared through the Civil Aeronautics Authority, and I had to prove the title to the plane before they would give me the registration which would allow me to fly it. Now, we get back to that same agreement.

Q. To prove the title to the plane, you had to prove you were within the requirements of the agreement? [359]

A. Until I proved to the Civil Aeronautics Authority title of the plane, they would not issue the registration.

The Court: Any further questions?

Mr. Blackman: That is all.

Mr. Abbott: One question, your Honor.

(Testimony of George C. Finn.)

Q. (By Mr. Abbott): Was it then your effort, in your discussions with Mr. Bradley and the other Federal Security Agency employees, to demonstrate to them that the plane was in fact scrap within the meaning of Plaintiff's Exhibit 1, the Form 65 agreement?

A. No. I did not attempt to demonstrate the plane was in fact scrap. I asked them what was a scrap warranty, what was a scrap airplane, what was a restriction, and what was a removal of a restriction. Nobody seemed to know.

Q. You tried to persuade them that the airplane was scrap, did you not?

A. I didn't try to persuade them. I merely brought the data, just as I would have solved a mathematical problem, and put it before them and asked them to determine whether or not they were going to allow me a registration on this airplane so that I could——

Q. And that data included the pictures that you have previously described?

A. No, sir. I did not refer to those pictures on that airplane. [360]

Mr. Abbott: No further questions.

The Court: You may step down, Mr. Finn. You are excused from further attendance as a witness. If you attend this trial it will be of your own volition——

The Witness: Thank you, sir.

The Court: As a party, in view of your an-

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nounced intention not to participate, and you may not feel called upon to appear.

The Witness: If I attend the trial any further, it will only be to protect what rights I have.

The Court: If you participate in the trial, of course, you will be participating, you understand that——

The Witness: Yes, your Honor. We will be here.

The Court: ——not under any order of the court.

The Witness: That is correct, yes, your Honor.

(Witness excused.)

The Court: Now, is there any occasion to require Mr. Charles Finn to appear?

Mr. Nelson: No, your Honor.

Mr. Abbott: We wish to ask him a few questions, your Honor, in rebuttal.

The Court: You mean tomorrow or——

Mr. Abbott: Whenever rebuttal for the Government is on the calendar, your Honor.

The Court: How much more testimony will there be on the [361] Vineland case?

Mr. Nelson: We still have to put on our case, and I would imagine it would not take more than one hour.

The Court: How about you, Mr. Blackman?

Mr. Blackman: I think our case should not take more than an hour. That is, our examination, not cross-examination.

The Court: Well, you are excused, Mr. Charles

Finn, until tomorrow afternoon at 1:30. You are instructed to return here at that time. But you need not return tomorrow morning, unless you so desire.

Mr. Charles C. Finn: Thank you.

The Court: The trial will be recessed until tomorrow morning. Any objection to resuming again at 9:30, ladies and gentlemen?

If not, until tomorrow morning at 9:30 o'clock. And again, before we separate, I must admonish you of your duty not to converse or otherwise communicate among yourselves or with anyone else upon any subject touching the merits of this trial; and not to form or express an opinion on the case until after it has finally been submitted to you for your verdict.

You are now excused until tomorrow morning at 9:30.

(The jury retired from the courtroom and the following proceedings were had in the absence of the jury.) [362]

The Court: The trial will recess until tomorrow morning at 9:30 o'clock.

Mr. Abbott: May we have permission to file proposed instructions, your Honor?

The Court: Is it stipulated, gentlemen, the jury have left the courtroom?

Mr. Nelson: So stipulated.

Mr. Blackman: So stipulated.

The Court: Yes. You may serve and file proposed instructions, if you desire.

(Testimony of George C. Finn.)

Mr. Abbott: I am now filing the original and a copy, and handing a copy to each of counsel, and parties not represented by counsel.

Mr. Blackman: Your Honor, in that regard, will we be informed before the matter is submitted upon what issues the matters are that are to be submitted to the jury?

The Court: Yes. We will discuss that and formulate the question. We will have ample opportunity, apparently, because if we can close the testimony tomorrow, the case will have to go to Wednesday morning for submission to the jury. I didn't anticipate the testimony would be so lengthy. I promised one member of the jury, as you may recall, she is on the election board, and I told her that she would not be called upon to serve here on Tuesday; and in any event, I am not disposed to hold court on election day. So we will have [363] some opportunity to work these matters out.

Mr. Abbott: In that connection, your Honor, the testimony today has necessitated contact with Washington to bring another witness to Los Angeles, who may not be here tomorrow. I think the Government's rebuttal will take about a day, in any event. The witness may not be here tomorrow, and if he is not we would like to present his testimony on Wednesday when court resumes. May it be understood that that will not be too late for the presentation of his testimony? I can assure the court no time will be lost, as I am confident all available

time will be taken in with the instructions and further evidence.

The Court: We will see how it goes.

Mr. Nelson: If the court please, in order to save time in the morning, as indicated to the court the other day, we will show a film identifying this aircraft, and the condition and use. Could we have permission to set up the equipment before court opens tomorrow morning so we will not have to take the time of the court to do that?

The Court: Yes, you may; any time you think most convenient.

Mr. Nelson: Thank you.

The Court: Anything further, gentlemen?

Mr. Abbott: Nothing further.

The Court: Until 9:30 tomorrow morning. Court will [364] adjourn.

(Whereupon, at 5:00 o'clock p.m. a recess was taken until 9:30 o'clock of the following day, Friday, October 29, 1954.) [365]